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THE QUESTION

OF

Judicial and Executive Separation

AND

THE BETTER TRAINING

OF

JUDICIAL OFFICERS.

BY

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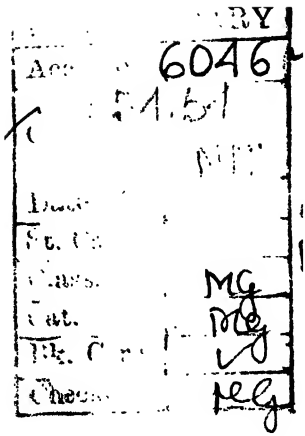

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Introductory Note

INTRODUCTORY NOTE

The question of the separation of the executive from judicial functions is an old one. All that could be said on the subject has possibly been said. The past literature on the subject shows that the question has been discussed threadbare. My only excuse for publishing this little book is to present to the public a collection in a convenient form containing the more important materials connected with the discussion of this all important subject and I shall consider my labour and trouble amply repaid if this book succeeds in supplying to a busy man the information that he desires to obtain on the subject but which he can not obtain without spending more time than what he can spare. I trust also that this book may in some measure revive the interest of the public in the subject. The book consists of five parts.

In Part I, I have discussed the question of the separation of judicial from executive duties and the cognate question of a better training of judicial officers. The first portion of this part contains mainly a historical retrospect of the subject. In drawing up this historical retrospect I have been materially helped by Mr. R. C. Dutt's draft of the memorial on the subject which was ultimately submitted to the Secretary of State over the signature of Lord Hobhouse and others. I have also derived very valuable assistance from Mr. Prithwis Roy's well-known pamphlet on the subject which was published in the year 1901 at the instance of Lord Stanley of Alderley. In the second portion of this part I have drawn up a scheme, which I venture to think, has never been presented before the authorities or the public in the particular form in which I seek to present it. The appendices and the tables will, I hope, be found useful

by all who desire to study or to discuss the question wi any degree of seriousness.

Part II gives a collection of a few cases illustrating the evils of the system. The cases are by no means exhaustive but are only illustrative. Many more cases could, perhaps, have been included in the collection but I have for the present purposely refrained from including too many of these cases in my collection, for, unfortunately, these cases have a tendency to rake up memories which I would much rather like to see buried than brought back to life.

Our quarrel, it is hardly necessary for one to remind the reader, is with the system and not with the men. Indeed, I go so far as to say that it is due to the high moral tone of the members of the Indian Civil Service that abuses are not more frequent than what they are at the present moment. The worst instances of such abuse of power occur where the officer concerned proceeds from a misguided zeal to punish some supposed guilty person. He proceeds on the assumption that the end in view is a laudable one and he thinks that he need not be too scrutinising as to the means he would adopt to gain that end. He moreover believes that the man he is prosecuting and judging is guilty and if he is a zealous and earnest officer he naturally resents the idea of the supposed guilty man getting off without punishment. The mischievous and the pernicious system under which he works often makes it his duty practically to prejudge the supposed criminal on *exparte* and perhaps interested statements of his subordinates often ill-paid and ill educated and the officer concerned would be more than human if he could brush aside the cumulative effect of the informations so received by him in forming his judgment as to the guilt or innocence of the accused person he is trying. The result very often is tha instead of prosecuting the accused he ends in persecutin him and instead of judging him fairly and impartially h

starts by misjudging him from the outset. Some of the cases collected will illustrate the truth of these criticisms.

The cases collected will, I believe, show at any rate that the mischief complained of still flourishes and I venture to think it will not be necessary to justify my remarks by publishing other cases which for obvious reasons had better remain unpublished. In Mr. Manomohan Ghose's well-known pamphlet cases were collected for 1874 to 1894. I have attempted to collect here only few out of the many cases we had during the last 16 years.

Part III is a reprint of the excellent pamphlet of my illustrious countryman, the late Mr. Manomohan Ghose who laboured so earnestly and ungrudgingly in the cause of the separation of the judicial from the executive functions now combined in Indian Magistrates. I am indebted to my friend Mr. Mahimohan Ghose (retired I.C.S.) for the permission he has so cheerfully given for reprinting his father's well-known pamphlet.

Part IV contains the labours of another distinguished and patriotic Indian to whom the cause I am undeavouring to place before the public owes so much—I mean the late Mr. Romesh Chunder Dutt. In this part I have given a reprint of his scheme as also a reprint of a well-known memorial which I believe was mainly drawn up by the late Mr. Dutt.

Part V is a reprint of Sir Harvey Adamson's speech and scheme. Sir Harvey Adamson's speech maybe said to be the latest official pronouncement on the subject and has a value peculiarly its own as being the matured opinion of an official brought up in the traditions of the Indian Civil Service and familiar with all arguments that are usually brought forward by the members of that great service against the separation of the two functions. I say advisedly that Sir Harvey Adamson's is the latest published official pronouncement of the subject because Sir Reginald Craddock in his recent speech in the Legislative Council only

sought to throw out the question on the ground that it was still under the consideration of the Secretary of State and also on the ground that no definite scheme had been placed before the Council and that he did not proceed on the basis that the scheme ought not to be accepted. I have ventured now to place a definite scheme and I only hope that it will be considered and discussed by the authorities and if it be found to be a reasonable one it would be given effect to at any rate, as an experimental measure.

2nd April, 1913,
34-1, Elgin Road,
Calcutta.

PROVASH CHUNDER MITTER.

PART I

The Question of Separation and Better Training of Judicial Officers

Separation of Judicial from Executive Duties and the Better Training of Judicial Officers

The question of the separation of judicial from executive duties is almost as old as the British Empire in India. It is well known that after the grant of the Dewani in 1765 A. D. to the East India Company the administration of criminal justice was left in the hands of the Mahomedan officers appointed by the Nawab Nazim of Bengal, Behar and Orissa. By a resolution of the Governor-General in Council, dated the 6th of April, 1781 (see Colebrooke's supplement, p. 130) some powers with respect to the administration of criminal justice regarding apprehension of persons charged with dacoity and other crimes attended with violence were transferred to the Judges of the Civil Courts. The union of the offices of Judge, Magistrate and Collector was however introduced for the first time in 1787 in pursuance of the instructions of the Court of Directors brought out by Lord Cornwallis at the time of his appointment. In a well-known Minute Sir John Shore, who advocated this system, observed as follows:—"People accustomed to a *despotic authority* should look to one master. It is impossible to draw a line between the revenue and the judicial departments to prevent them from clashing; *and in this case either the revenues must suffer or the administration of justice must be suspended.*"

Lord Cornwallis, however, after gaining some experience of the country, was satisfied that the result of this system *would be to sacrifice the administration of justice to the supposed fiscal interests of the Government.* With his characteristic statesmanship and singular sagacity he determined to vest the duties of collection of revenue and administration of justice in separate officers. He accordingly abolished the *Mul Adalat*, a (Revenue Court) and withdrew from the Collectors

of revenue all judicial powers. We therefore find in Regulation II of 1893 passed in Lord Cornwallis' time that it is pointed out in clear and unequivocable language that the combination of these two functions was extremely undesirable.

By the system so introduced by Lord Cornwallis in 1793, the duties of Judge and Magistrate were united in the same officer and the Collector was deprived of all judicial powers. This system continued till 1821 when a permissive Regulation (Reg. IV of 1821) was passed empowering the Governor-General in Council to invest a Collector with the powers of a Magistrate or Joint-Magistrate, and to invest a Magistrate with the powers of a Collector. Doubts were raised as to the validity of this arrangement and we find that in 1825 Regulation V of that year was passed to validate what had been done and to empower the Governor-General to make similar arrangements thereafter when expedient. By section 2 of Regulation VII of 1831 the Governor-General in Council was further empowered to invest the *Zilla* or City Judges with full powers to conduct the duties of the Sessions. The union of the offices so introduced continued for a few years. The Collectors were so over-worked with their legitimate duties as revenue officers that the duties of the office of the Magistrate were sadly neglected. In 1837 Lord Auckland procured the sanction of the Court of Directors to the separation of the two offices which was gradually effected in the course of the following eight years. In 1859, however, (see Despatch No. 15 of the 14th April 1859) the offices of Collector and Magistrate were again united as a temporary measure. In the meantime in the year 1838 a Committee was appointed by the Government of Bengal to draw up a scheme for the more efficient organisation of the Police. The Committee consisted of Mr. F. J. Halliday (afterwards Sir F. J. Halliday who subsequently became Lieutenant-Governor of Bengal and Member of the Council of the Secretary of State), Mr. W. W. Bird and Mr.

J. Lewis. Mr. Halliday drew up an important Minute and Messrs. Bird and Lewis approved of Mr. Halliday's views as expressed in that Minute. In that Minute Mr. Halliday pointed out in the forcible language the extreme undesirability of combining the duties of Judge, Sheriff, Justice of the Peace and Constable in the same person. He characterised such combination as absurd as well as mischievous. He pointed out further that a Magistrate ought to have no previous knowledge of a matter with which he had to deal judicially. He said "*The union of Magistrate with Collector has been stigmatised as incompatible, but the junction of thief-catcher with Judge is surely more anomalous in theory and more mischievous in practice.* So long as it lasts, the public confidence in our Criminal Tribunals must always be liable to injury and the authority of Justice itself must often be abused and misapplied and the power of appeal is not a sufficient remedy—the danger to justice, under such circumstances, is not in a few cases, nor in any proportion of cases, *but in every case. In all the Magistrate is constable, prosecutor and Judge.*"

In 1854 Mr. C. Beadon, the Secretary to the Government of Bengal, in a letter to the Government of India, also pointed out the desirability of the separation of the executive from judicial functions. In the same year the Hon'ble Mr. (afterwards Sir) J. P. Grant as a Member of the Council of the Governor-General recorded a Minute to the effect that the combination of the duties of the Superintendent of Police, Public Prosecutor and Criminal Judge was objectionable in principle and the Government ought to "dissever as soon as possible the functions of Criminal Judge from those of thief-catcher and Public Prosecutor, now combined in the Office of the Magistrate."

In September 1856, a Despatch of the Court of Directors of the East India Company (No. 41, Judicial Department) reiterated the same views and stated that the management of the Police of each district should be taken out of the hands of the Magistrate.

In 1857 the Hon'ble Mr. J. P. Grant again recorded a Minute upon the "Union of the functions of Superintendent of Police with those of a Criminal Judge" and that eminent Judge and erudite lawyer Sir Barnes Peacock (then Mr. Peacock) agreed with the views of Mr. Grant. In that Minute Sir J. P. Grant observed "In which way is crime more certainly discovered, proved and punished, and innocence more certainly protected—when two men are occupied *each* as thief-catcher, prosecutor, and Judge or when one of them is occupied as thief-catcher and prosecutor and the other as Judge? I have no doubt that if there is any real difference between India and Europe in relation to this question, the difference is all in favour of relieving the Judge in India from all connection with the detective officer and prosecutor. *The judicial ermine is, in my judgment, out of place in the bye-ways of the detective policeman in any country, and those bye-ways in India are unusually dirty. If the combination theory were acted upon in reality—if an officer, after bribing spies, endeavouring to corrupt accomplices, laying himself out to hear what every tell-tale has to say, and putting his wit to the utmost stretch, for weeks perhaps, in order to beat his adversary in the game of detection, were then to sit down gravely as a Judge, and were to profess to try dispassionately upon the evidence given in Court the question of whether he or his adversary had won the game, I am well convinced that one or two cases of this sort would excite as much indignation as would save me the necessity of all argument a priori against the combination theory.*" These are not the words of an irresponsible critic but of a responsible English official who had worked his way up to a very high rung of the official ladder and who was presumably familiar with the system he was criticising. His official position as well as the occasion of the Minute must have led him to weigh every word that he wrote and yet no condemnation of the system he was criticising could be stronger than his. Mr. Grant thought that one or two cases of this sort would excite such indignation, as would save him the necessity of all argument *a priori* against the combination

theory. In this perhaps he was too optimistic. Perhaps the age in which he lived and the official ethics of those days lent itself to such optimism. But, alas ! to the misfortune of the Indians and to the fair name of British Justice such instances have occurred not once or twice but so repeatedly that the public has now almost ceased to take an interest in such cases. Time there was when each fresh case of this nature caused a wild outburst of public indignation but there have been so many of these cases that the public has grown callous and perhaps has come to look upon such cases as an ordinary incidence of existence in India. Is such a state of things conducive to the best interests of the British Empire in India ? Perhaps the officials of the present day who have presumably grown wiser than those statesmen and far-sighted administrators who built the empire condescend to answer the question.

To resume the thread of our historical examination of the question we find that in 1860 a Commission was appointed to enquire into the organisation of the Police. Mr. M. M. Court, C. S., N. W. P., Mr. S. Wanchope, C. B. C., S. Bengal, Mr. W. Robinson, C. S., Inspector-General of Police, Madras, Mr. (afterwards Sir) R. Temple, C. S., Panjub, Lt.-Col. Bruce, C. B., Bombay Army, Chief of Police, Oudh and Lt.-Col. Phayre, Commissioner of Pegu were the Members of the Commission. The Members represented all the Provinces of India and in the words of Sir Bartle Frere were "all men of ripe experience, especially in matters connected with Police." In this report the Police Commission stated that as a rule there should be complete severance of Executive police from Judicial authorities and the official who may be in any way connected with the prosecution of any offence or the collection of evidence should never sit in judgment—not even with a view to committal for trial before a higher tribunal. The report however went on to add that as a matter of practical and *temporary convenience* in view of the constitution of the official agency then existing in India an exception

should be made in the case of the District Officer, but they were careful to point out that such combination was open to the same objection on the question of principle, but that the principle should be temporarily sacrificed to expediency. They looked forward to the time when improvements in organisation would in actual practice determine this combination even in the District Officer, for the present however the exigencies of the situation merely enabled them to "make this departure from principle less objectionable in practice" by making the exercise of the respective functions "departmentally distinct and subordinate to its own Officers."

The recommendations of the Police Commission were adopted by the Government of India and when Sir Bartle Frere introduced in the Legislative Council in the year 1860 the bill which ultimately became Act V. of 1861 some very interesting discussions took place. The discussions show that the Government of India regarded the exceptional union of Judicial with Police functions in the District Officer as a temporary compromise. Sir Barnes Peacock from his place as the Vice-President of the Council, stated that he had always been of opinion that "a full and complete separation ought to be made between the two functions." The Hon'ble Mr. A. Sconce described the bill as a "half-and-half measure" and the Hon'ble Sir Bartle Frere assured the Hon'ble Mr. Sconce that no body was more inclined than he to make it a whole measure if only the Executive Government could be induced to support a measure that would effect as till more complete severance of the Police and Judicial functions than what the bill contemplated.

As regards the cognate question of the training of Judicial Officers the High Court in various administration reports of the sixties (notably in those of 1864, 1866, 1867 and 1869) expressed its dissatisfaction with the existing system and various District Officers, Divisional Commissioners and other high officials admitted in official correspondence that the present system of training of Judicial officers was certainly

defective and reform was urgently necessary (vide letter from Mr. E. C. Craster, C. S., District Magistrate of Monghyr to the Commissioner of the Bhagalpur Division, No. 600, dated Monghyr the 4th December 1866, letter from Mr. J. W. Dalrymphe, C. S., Commissioner of the Patna Division to the Secretary to the Government of Bengal, Judicial Department, No. 7, dated Patna the 9th January 1867, letter from Mr. R. P. Jenkins, C. S., Offg. Commissioner of the Bhagalpur Division to the Under-Secretary to the Government of Bengal, No. 17, dated Bhagalpur, the 16th January 1867, letter from Mr. C. F. Montresson, C. S., Commissioner of the Burdwan Division to the Secretary to the Government of Bengal, Judicial Department, No. 16, dated Burdwan, the 19th January 1867, letter from Mr. R. B. Chapman, C. S., Offg. Commissioner of the Presidency Division to the Secretary to the Government of Bengal, Judicial Department, No. 16 Ct., dated Krishnaghar the 14th February 1867, and the note of Mr. H. L. Dampier, C. S., Officiating Secretary to the Government of Bengal, dated the 27th August 1867). In this last-mentioned note Mr. Dampier observed as follows :—"I am convinced that the only true and lasting solution of the difficulty is a complete separation of judicial and executive duties." This question constantly came up for consideration by the Government and various high officials and the generally accepted opinion was that the existing system should be changed. Limitations of space preclude me from discussing this question in any greater detail but I beg to refer to the following official papers and documents an examination of which will convince one that the generally accepted official opinion was in favour of a change of the existing system (Despatch from the Secretary of State, No. 11 of the 10th January 1868 with enclosures, Letter of the Hon'ble Ashley Eden, Secretary to the Government of Bengal, Judicial Department to the Secretary to the Government of India, Home Department, dated 1st December 1869, Letter from Mr. F. R. Cockerell, C. S. to the Under Secretary

to the Government of Bengal, dated Simla the 25th July 1868, Letter from Mr. (afterwards Sir, and Lieutenant-Governor of Bengal) Rivers Thompson, C. S., Officiating Superintendent and Remembrancer of Legal Affairs to the Secretary to the Government of Bengal (No. 1335, dated Fort William the 25th July 1868), note by Mr. (afterwards Sir) H. S. Maine, Law Member to the Government of India, dated the 12th March 1868 and a Note by Sir William Markby, a Judge of the Calcutta High Court, dated the 2nd November 1868).

After all this strongly expressed official opinion, one would have expected that the "temporary compromise" and "half-and-half measure" of Sir Bartle Frere introduced in 1860 would soon be remedied. India however is a land of surprises and it is no unusual thing for us in India to find that instead of advancing with the advance of times the hand of progress is often set back specially when some important question is taken up by a high official with reactionary ideas. The "word of hope which was spoken to the ear" by such eminent officials as Sir J. P. Grant, Sir Bartle Frere, Sir Barnes Peacock, Sir Henry Summer Maine, and last but not least Sir William Markby was destined "to be broken to the heart" by that reactionary of reactionaries Sir Fitz James Stephen to whom India owes so much of her reactionary legislation and reactionary methods of administration. Unfortunately for India at the psychological moment when the hope expressed by Sir Bartle Frere was about to be fulfilled, at any rate could easily have been fulfilled, I mean when the Criminal Procedure Code was being amended in the year 1872, Sir Fitz James Stephen was reigning over the legislative destinies of India, and in a Minute (printed as No. XXXI of the Selections from the records of the Government of India, Home Department, dated 1872 and No. 89 of the Selections from the records of the Government of India, Home Department 1872) memorable for the reactionary spirit it breathes, for the half truths on which it is based, for the common places about "personal rule," "prestige" and "dignity" Sir Fitz

James Stephen rudely dashed the hopes raised by the weighty and wise words of so many distinguished officials who had preceded him and embodied a system of Judicial administration which is unique in the history of the world and which in the words of a distinguished official already quoted perpetuated a system by which it enabled "the thief-catcher and the prosecutor" to be "the Judge" in a cause in which he was really in the position of the prosecuting officer, and which enabled such officer "after bribing spies, endeavouring to corrupt accomplices, laying himself out to hear what every tell-tale has to say, putting his wit to the utmost stretch, for weeks perhaps, in order to beat his adversary in the game of detection," to sit in the solemn farce of judging gravely and dispassionately the cause in which he has taken so much interest as the real prosecutor. No body questions the eminence of Sir Fitz James Stephen as a lawyer and a jurist and if the reasons assigned by him for perpetuating this cruel wrong were the reasons of a lawyer or of a jurist one could have understood the position. But the reasons assigned by him were that "under the circumstances of British India" the system must continue, that the "maintenance of the position of the District Officers is essential to the maintenance of British Rule in India, and that any diminution in their influence and authority over the natives would be dearly purchased even by an improvement in the administration of justice." Surely these were matters in which the opinion of Sir J. P. Grant, Sir Bartle Frere, the distinguished officials who composed the Police Commission of 1860, or the Police Committee of 1838, or Lord Cornwallis who was responsible for the regulation of 1793 were entitled to far greater weight than that of Sir Fitz James Stephen however eminent he might be as a lawyer and as a jurist. Most of these officials had spent their life-time in India at a time when it was usual for Indian officials to speak the language of the country like the Indians themselves; had worked and moved amongst the Indian people; knew the thoughts, prejudices,

ideas and aspirations of the Indian people and above all belonged to a period of Indian history when the officials of the East India Company were building for England her Indian Empire. Surely in a matter as to what was best for "the maintenance of the British rule in India," or what "were the circumstances of British India" the opinion of these veterans, these empire-builders must unhesitatingly be accepted before the opinion of a gentleman to whom the Indian languages, Indian thoughts and aspirations were perhaps a sealed book. He had come out to India to fill a comfortable office for a comparatively short period of five years after all the stress and strain of the empire-building was over, and is sole right to arrogate to himself the authority to speak on matters such as these was derived from an arm-chair study of thrice distilled dockets of reports of officials, who in their turn were certainly far less competent to speak about real India than their distinguished predecessors and who came to serve in India at a time when it was the exception rather than the rule to know the Indian languages intimately. Thanks to the convenient rules of leave and furlough and the annihilation of distance by the opening of the Suez Canal and of the steamship companies it had come to be the exception rather than the rule to know Indians intimately, or to visit Indians at their own homes, and these came out to rule India at a time when they could afford to talk glibly of "prestige," "diminution of influence and authority over natives" instead of turning their thoughts (unlike those distinguished predecessors of theirs) to win the hearts of the people by making British Justice more broad-based or to make British rule more loved and respected rather than feared by bringing contentment and goodwill to the teeming millions of British subjects in India.

The Criminal Procedure Code of 1872 embodied Sir Fitz James Stephen's re-actionary methods of government and continued the serious blot in Indian administration of combining the judicial with executive functions in the same

officer. A system so defective as this was bound to create serious dissatisfaction and result in miscarriage of justice in many cases. The late Mr. Manomohan Ghose brought out two excellent pamphlets, in one of which (published in 1896), he collected 20 typical cases from 1876 to 1894 which forcibly demonstrate the evils of the present system. The late Mr. Romesh Chunder Dutt published in the year 1893 an excellent Scheme of separation of the judicial from executive duties, and it was mainly through the exertion of those two distinguished Indians that the question was kept before the public, both in England and in India. It was also through the exertion of those two gentlemen that opinions of several distinguished retired Indian Chief Justices and High Court Judges were collected and published. Statements favourable to the Scheme of separation from Lord Hobhouse, Sir Richard Garth, Sir Richard Couch, Sir John Budd Phear, Sir William Markby and Sir Raymond West were published in the columns of "India." Ultimately a memorial was submitted to the Secretary of State by a number of distinguished Anglo-Indian Judges and administrators in the year 1899. The memorial was subscribed by Lord Hobhouse, Sir Richard Garth, Sir Richard Couch, Sir Charles Sargent, Sir William Markby, Sir John Budd Phear, Sir John Scott, Sir William Wedderburn, Sir Ronald Wilson and Mr. H. J. Reynolds. Questions were often asked in Parliament as also in the Legislative Councils in India. Vague and indefinite promises of reform were often held out, but nothing definite was done. In the year 1908, however, Sir Harvey Adamson, the then Home Member, in his budget speech, delivered on the 27th March of that year, promised to effect a separation of judicial and executive duties in Bengal and in Eastern Bengal and formulated a Scheme for the purpose, but even that Scheme has not been carried into effect. The Scheme formulated by Sir Harvey Adamson is however defective in many respects and will hardly form an effective remedy of the defects of the existing system. It is useful however as an admission by a responsible executive

official that separation is needful. Sir Harvey Adamson in the course of his speech observed as follows :—"I fully believe that subordinate Magistrates very rarely do an injustice wittingly. But the inevitable result of the present system is that criminal trials, affecting the general peace of the district, are not always conducted in that atmosphere of cool impartiality which should pervade a Court of Justice. *Nor does this completely define the evil, which lies not so much in what is done, as in what may be suspected to be done; for it is not enough that the administration of justice should be pure; it can never be the bedrock of our rule unless it is also above suspicion.*"

Two objections are mainly urged by the officials against the separation of executive from judicial functions.

I. That the separation of the executive from judicial functions will involve considerable additional expense.

II. That the District Magistrate cannot be deprived of his judicial powers without loss of prestige and influence over the people.

As regards objection No. I it is submitted that according to the Scheme submitted below no additional cost will be incurred. But even if additional expense were necessary such expense ought not to be grudged. In the words of Sir Harvey Adamson "the experiment may be a costly one, but we think that the object is worthy."

As regards objection No. II the better opinion is against it. I have already drawn attention to the opinion of distinguished Indian officials, Judges and Chief Justices who are in favour of separation and it is hardly necessary to dilate on the point in any greater detail. I may be permitted however to quote the following passage from the speech of Sir Harvey Adamson :—

"Those who are opposed to a separation of functions are greatly influenced by the belief that the change would materially weaken the power and position of the District Magistrate and would thus impair the authority of the

Government of which he is the chief local representative. The objection that stands out in strongest relief is that prestige will be lowered and authority weakened if the officer who has control of the police and who is responsible for the peace of the district is deprived of control over the Magistracy who try police cases. Let me examine this objection with reference to the varying stages of the progress of a community. Under certain circumstances it is undoubtedly necessary that the executive authorities should themselves be the judicial authorities. The most extreme case is the imposition of martial law in a country that is in open rebellion. Proceeding up the scale we come to conditions which I may illustrate by the experience of Upper Burma for some years after the annexation. Order had not yet been completely restored and violent crime was prevalent. Military law had gone and its place had been taken by civil law of an elementary kind. District Magistrates had large powers extending to life and death. The High Court was presided over by the Commissioner, an executive officer. The criminal law relaxed, and evidence was admitted which under the strict rules of interpretation of a more advanced system would be excluded. All this was rendered absolutely necessary by the conditions of the country. Order would never have been restored if the niceties of law as expounded by lawyers had been listened to, or if the police had not gone hand in hand with the justiciary. Proceeding further up the scale we come to the stage of a simple people, generally peaceful, but having in their character elements capable of reproducing disorder, who have been accustomed to see all the functions of Government united in one head, and who neither know nor desire any other form of administration. The law has become intricate and advanced, and it is applied by the Courts with all the strictness that is necessary in order to guard the liberties of the people. Examples would be easy to find in India of the present day. So far I have covered the stages in which a combination of magisterial and police duties is

either necessary or is at least not inexpedient. In these stages the prestige and authority of the Executive are strengthened by a combination of functions. I now come to the case of a people among whom very different ideas prevail. The educated have become imbued with Western ideals. Legal knowledge has vastly increased. The lawyers are of the people, and they have derived their inspiration from Western law. Anything short of the most impartial judicial administration is contrary to the principles which they have learned. I must say that I have much sympathy with Indian lawyers who devote their energies to making the administration of Indian law as good theoretically and practically as the administration of English law. Well, what happens when a province has reached this stage and still retains a combination of magisterial and police functions? The inevitable result is that the people are inspired with a distrust of the impartiality of the judiciary. You need not tell me that the feeling is confined to a few educated men and lawyers and is not shared by the common people. I grant that if the people of such a province were asked one by one whether they objected to a combination of functions, ninety per cent of them would be surprised at the question and would reply that they had nothing to complain of. But so soon as any one of these people comes into contact with the law his opinions are merged in his lawyer's. If his case be other than purely private and ordinary, if for instance he fears that the police have a spite against him or that the District Magistrate as guardian of the peace of the district has an interest adverse to him, he is immediately imbued by his surroundings with the idea that he cannot expect perfect and impartial justice from the Magistrate. It thus follows that in such a province the combination of functions must inspire a distrust of the Magistracy in all who have business with the Courts. Can it be said that under such circumstances the combination tends to enhancement of the prestige and authority of the Executive? Can any Government be

strong whose administration of justice is not entirely above suspicion? The answer must be in the negative. The combination of functions in such a condition of society is a direct weakening of the prestige of the Executive."

After this latest pronouncement of high official opinion the objection hardly deserves any further consideration.

THE SCHEME

I shall now proceed to place before you a Scheme which I submit will effectually do away with all the defects of the existing system. The scheme will not entail any additional expense and will also secure proper training for Judicial Officers.

I propose a complete separation of judicial from executive duties. I further propose that all officers who exercise any judicial powers, whether civil or criminal, should be subordinate to the District Judge and not to the District Officer as at present. I also propose that the District Officer who at present discharges the duties of a District Magistrate and of a District Collector should be relieved of his magisterial duties. Such officer after being relieved of such duties may well be known as "District Officer." Even when relieved of his magisterial duties he will have his hands quite full. It is well known that very little judicial work is usually done by the District Magistrate. He will still have to look after the following amongst other branches of administration, namely, Land Revenue, Excise, Jails, Police, Sanitation, Dispensaries, Education, Municipalities, and various other matters. It is a matter of constant complaint that District Officers have too much work on their hands. The relief of judicial duties will go to mitigate this complaint and leave them more time to look after the legitimate duties of an executive Officer, amongst which the proper supervision of the duties of the Police Officers of his district ought to form an important item. The judicial work of a district, both Civil and Criminal, should be under the

supervision of the District and Sessions Judge. He should be assisted in very heavy districts with an additional District and Sessions Judge and one or two Civil Judges who should exercise the powers of a Subordinate Judge and who should also be given the criminal powers of an Assistant Sessions Judge as also the Judicial powers that are exercised by a District Magistrate under the Criminal Procedure Code; in districts where the work is neither very heavy nor very light there need not be any additional District and Sessions Judge but only one Additional Judge who will exercise the powers of a Subordinate Judge, an Assistant Sessions Judge as also the Judicial powers of a District Magistrate under the Cr. P. C and in very light districts the District and Sessions Judge may be assisted by a Subordinate Judge who will also exercise the Judicial powers of a District Magistrate under the Cr. P. C. As I proceed to develop the Scheme I propose to show in detail the distribution of judicial work for the districts in the Presidency of Bengal, and for the other provinces such distribution of work may be easily worked out on the lines indicated in the Bengal Scheme. The District Judges and all Judicial Officers under them should be placed under the High Court, in all matters, namely pay, promotion, leave suspension, punishment etc., and will not have any concern with the District Officer or Divisional Commissioner or the Local Government. As a part of this scheme the Judicial Department of the Local Government may well be placed under the High Courts. This arrangement will also mean some further saving of expenses, for at present the High Courts have an expensive staff under the English Department and the local governments have a more expensive staff for its judicial department. These two departments after amalgamation can surely be run with lesser expense and possibly with lesser friction. I propose further that the Judicial Service in India should be divided into two branches, one an Imperial Judicial Service for the whole of India and the other a Provincial Judicial Service for each Province. The Imperial Judicial

Service may well be recruited and trained in the manner following.

I propose that 60 p. c. of the vacancies of this service should be filled up by a competitive examination held in London and 40 p. c. should be recruited locally. Any person (British or Indian) who holds a degree of Bachelor in Law of a British or Indian University or a Barrister-at-Law, who holds a degree of Bachelor in Arts of any English or Indian University will be eligible for this examination. Candidates should be between 25 to 30 years of age. No candidate should be allowed to appear more than twice in the said examination. The examination should be held to test fitness of the candidates in the following subjects:—(1) English Law with special reference to the candidates' grasp of general principles with reference to the following subjects of English law, namely, Jurisprudence both historical and analytical, Equity, Contract and Torts, Wills, Private and International Law, the Law of Evidence and Criminal Law of England, (2) some important Indian Statutes such as the Penal Code, the Criminal Procedure Code, the Civil Procedure Code, the Indian Contract Act, the Transfer of Property Act, the Succession Act, the Limitation Act and other important Statutes relating to the whole of British India, (3) Constitutional Law, English and Indian, (4) Hindu and Mahomedan Law, (5) Elements of Roman Law. The examination should be a fairly searching one and candidates who will pass this examination may be fairly expected to possess a thorough grasp of legal principles and a fair knowledge of Indian Law. After passing this examination successful candidates will be appointed Members of the Indian Judicial Service and will forthwith come out to India. After coming out to India they should be posted to one of the three Presidency towns of India, (Calcutta, Madras and Bombay) for a period of two yeas during which time they will have to qualify themselves for the discharge of their future duties. While residing in the Presidency towns they should

attend the High Court (Original Side and Sessions and the Appellate Side) and some other Courts near the Presidency towns, namely, Courts of Sessions Judges, District Judges, Subordinate Judges and Presidency and Provincial Small Cause Courts and Courts of Magistrates. They will have to take notes of cases and keep a diary of their attendance in these various Courts and submit the same to some selected senior Judicial Officer once a month. During this period they will have to pass departmental examinations in (1) the vernacular of the Province where they will serve and will have to shew a fair working knowledge of the language as written and spoken, a fair ability to read petitions and documents filed in records of cases, (2) an examination in the land tenures and statutes relating to the province where the officer will be placed, (3) an examination showing that the officer has a fair knowledge of Indian Case Law, and (4) an elementary knowledge of practical surveying and mensuration, as also some familiarity with the system of survey and settlement work of the Province in which he will be placed.

So long as an officer does not pass this departmental examination he will not be promoted to the next higher grade. During these two years the officer will draw a salary of Rs. 500 per mensem. His real position will be that of a probationer, but, as he will have to leave England and come out to India, I have proposed that his service will commence from the date he reaches India.

After spending these two years purely for the purpose of qualifying himself for his future work the officer will be entrusted with judicial work, Civil and Criminal. The nature of such work and the grades of his service are noted below :—

(1) He will serve on a salary of Rs. 750 for a period of, say, 2 years. During this period the officer will exercise the powers of a Munsiff as a Civil Judge and the powers of a Magistrate of the 2nd and 3rd Class and will try both Civil and Criminal cases. This period will really be the second period, in his

training and during this period he will receive a practical training in original cases, Civil and Criminal which will be of great service to him in his future work.

(2) Rs. 900 to Rs. 1,250 for a period of say 4 years. During this period the officer will at first exercise the powers of a Subordinate Judge as a Civil Judge and of a Magistrate of the 1st Class. After he has gained some experience he may be gradually entrusted with the Judicial powers of a District Magistrate and of an Assistant Sessions Judge as also with Appellate work, Civil and Criminal.

(3) Rs. 1,500 say for a period of three years. During this period the officer will be given the full powers of a District and Sessions Judge.

(4) Rs. 2,000 for such period as he may have to serve in this grade.

(5) Rs. 2,500 for such period as he may have to serve in this grade.

(6) Rs. 3,000 for such period as he may have to serve in this grade.

(7) Rs. 4,000 as High Court Judge.

I propose that at least 40 p. c. of High Court Judgeships should be reserved for the Members of this Service. Regard being had to the recent alteration of the statute and regard being had also to the fact that many of the Members of this Service will be Barristers there will not be any Statutory difficulty in allowing 40 p. c. of the High Court Judgeships to the Members of this Service. I further propose that two of the Small Cause Court Judgeships and two of the Presidency Magistrateships should also be reserved for the Members of this Service. The post of the Administrator General, the Official Assignee, and the Official Trustee may also be reserved for the members of this service. Pension and leave rules for the Members of this Service should be liberal,

As regards the remaining 40 p. c. I propose that 20 p. c. should be recruited from Barristers and Vakeels of approved merit and the other 20 p. c. by promotion from 1st Class Munsiffs of approved merit. The officers so recruited will at once start with a salary ranging from Rs. 750 to 1,000 as the High Court may think proper.

As regards the Subordinate Judicial Service I propose that Munsiffs and Subordinate Judges should also exercise the powers now exercised by the Deputy Magistrates. I also propose that some selected Subordinate Judges should be given the powers of an Assistant Sessions Judge and some should be vested with the Judicial powers of a District Magistrate. These officers will be specially useful in light districts. I would give an additional grade of Rs. 1,200 to Subordinate Judges and would increase the present strength in the grade of the Munsiffs drawing Rs. 500. I would throw open all the Small Cause Court Judgeships (excepting the 2 reserved for the Indian Judicial Service) and all the Presidency Magistrateships (excepting the two reserved for the Indian Judicial Service) to the Members of this Service.

This scheme is likely to be financially sound as will appear from the scales of the proposed salaries. Further, it will not obviously necessitate the appointment of any additional officers. The strength of the Subordinate Judicial Service will have to be increased, but that increase will mean a reduction of the strength of the Subordinate Executive Service.

The additional appointments in the Indian Judicial Service will not mean any financial burden as the total strength of the Indian Civil Service will be reduced. In the Scheme suggested by the late Mr. Romesh Chunder Dutt, the only weak point was the arrangement for the trial of Criminal cases in the Sub-divisions. According to the present Scheme there will be no difficulty on that head as there are Munsiffs not only in all Sub-divisional head-quarters but also in Chowkis which are not Sub-divisions.

At the present moment there are 27 Districts in the Presidency of Bengal. There are three District and Sessions Judges on a salary of Rs. 3,000, 13 District Judges on a salary of Rs. 2,500 and 15 District Judges on a salary of Rs. 2,000, altogether 31 District Judges. There are 17 Joint-Magistrates and Deputy Collectors on a salary of Rs. 900. There are 17 2nd grade Joint-Magistrates on a salary of Rs. 700. In the Subordinate Executive Service there is at the following moment the following cadre for the Presidency of Bengal.

Grade.	Salary.	Members.
First	Rs. 800	5
Second	Rs. 700	7
Third	Rs. 600	16
Fourth	Rs. 500	48
Fifth	Rs. 400	71
Sixth	Rs. 300	73
Seventh	Rs. 250	79
	Total ...	299

The present strength of the Provincial Judicial Service is as follows :

	Subordinate Judges	
Grade.	Salary.	Members.
First	Rs. 1,000	6
Second	Rs. 800	7
Third	Rs. 600	14
	Munsiffs	
First.	Rs. 500	12
Second	Rs. 400	40
Third	Rs. 300	50
Fourth	Rs. 250	66
Fifth	Rs. 200	36
	Total ...	231

In the Appendix the reader will find the necessary particulars of the scheme.

In Appendix A is shown on the left hand column the present distribution list of Executive and Judicial officers of each of the 27 districts of Bengal as it appears from the civil list of January 1913. On the right hand column appears the proposed distribution list after the scheme for separation has been given effect to.

In Appendix B is set forth a detailed calculation district by district showing how the scheme will work financially. In making this calculation I have taken an average of the pay of each class of officials as shewn there. It may be quite possible that in actual working there may be some difference here and there but I venture to think that the detailed calculation will convince any one who approaches the financial question with an open mind that in any view of the matter the change proposed will not add to the expenses of the judicial administration of the Presidency of Bengal. It has been shown on the other hand that there will be a considerable saving. I am quite alive to the fact that some criticism in the details may be possible.

In Appendix C is set forth the different grades of the Indian Judicial Service and of the Provincial Judicial Service.

It will be clear from the detailed calculation (vide Appendices) that the expenses after the scheme is given effect to will be much less than the expenses that are at present incurred in connection with the judicial administration of the Province. But even if it means more expense the reform ought to be effected. I may be permitted to repeat the words of Sir Harvey Adamson "the experiment may be a costly one but we think that the object is worthy." Then again I may point out that there can be no doubt that the expenses of the present Scheme will certainly be much less than that of Sir Harvey Adamson's. In this connection I may also note the fact that it is admitted on all hands that the Judicial Officers of the Indian Civil Service are urgently in need of a better legal training. This fact has been admitted for the last half

a century (vide the official papers referred to in an earlier part of this note). Very recently Sir Robert Fulton in a newspaper article has admitted this fact. Sir Herbert Carnduff, Sir Basil Scott and many members of the Indian Civil Service in their evidence before the Royal Commission have also admitted this fact. The improvement in the training of Judicial Officers suggested by Sir Herbert Carnduff will certainly be much more expensive and much less effective. According to Sir Herbert Carnduff's suggestion an officer before taking up the duties of a District Judge should have a few years (I presume it must be 3 years') training in England to qualify himself as a Barrister and should work in the Chambers of some Barrister in England. At this period of his service the officer's salary will be something between Rs. 1,200 to Rs. 1,500. To pay this salary or a good portion of it for a period of 3 years and then to pay the Call-fee and the Chamber-fee will come up to an enormous sum. The training too will be less effective, because apart from other reasons the officer will not qualify himself in trying original cases in India nor will he qualify himself in Indian Law, Indian Procedure and Indian languages. I venture to think that upon a proper consideration of the history of the question, the opinion of the high authorities who have expressed themselves in favour of this Scheme, the cogent reasons which exist to meet the objections that have been raised, the undoubted improvement in the training and tone of the Judiciary as also for the other important reasons point out in this note this much deferred and much needed reform should at once be given effect to and the Scheme set forth in this note should be accepted. There can be no doubt that the acceptance of the Scheme will make British Justice more loved, honoured and respected and will secure to India equal justice for all classes of the people.

APPENDIX A

Disposition of Officers District by District.

BACKERGANJ

EXISTING		*PROPOSED*	
Magistrate and Collector ...	1	District Officer and Collector ...	1
Additional District Magistrate ...	1	Joint-District Officer and Collector	1
Joint-Magistrate and Deputy Collector	1	Assistant Collector ...	2
Assistant Magistrate and Collector	3	Deputy Collector ...	8
Deputy Magistrate and Deputy Collector	15	Sub-Deputy Collector ...	9
Sub-Deputy Collector ...	11	District and Sessions Judge ...	1
District and Sessions Judge ...	1	Assistant Sessions Judge with the judicial powers of a District Magistrate and Sub-Judge	2
Additional District and Sessions Judge	1	Sub-Judge with the powers of a 1st class Magistrate ...	4
Sub-Judge	3	Munsiff and Deputy Magistrate ...	25
Munsiff	17		

BANKURA

Magistrate and Collector ...	1	District Officer and Collector ...	1
Deputy Magistrate and Collector	5	Deputy Collector ...	2
Sub-Deputy Collector ...	1	Sub-Deputy Collector ...	2
District and Sessions Judge ...	1	District and Sessions Judge ...	1
Sub-Judge	1	Sub-Judge with the judicial powers of a District Magistrate ...	1
Munsiff	7	Sub-Judge with the powers of a 1st class Magistrate common with Birbhum	1
		Munsiff and Deputy Magistrate ...	8

BIRBHUM

EXISTING		*PROPOSED*	
Magistrate and Collector ...	1	District Officer and Collector ...	1
Deputy Magistrate and Collector	4	Deputy Collector ...	2
Assistant Magistrate and Collector	1	Assistant Collector ...	1
Sub-Deputy Collector ...	3	Sub-Deputy Collector ...	3
District and Sessions Judge ...	1	District and Sessions Judge ...	1
Sub-Judge	1	Sub-Judge with the judicial powers of a District Magistrate ...	1
Munsiff and Deputy Magistrate...	6	Munsiff and Deputy Magistrate...	8

BOGRA

Magistrate and Collector ...	1	District Officer and Collector ...	1
Deputy Magistrate and Collector	8	Deputy Collector ...	5
Sub-Deputy Collector ...	4	Sub-Deputy Collector ...	4
District and Sessions Judge common with Pabna ...	0	District and Sessions Judge common with Pabna ...	0
Sub-Judge common with Pabna	1	Sub-Judge with the judicial powers of a District Magistrate	1
Munsiff	7	Munsiff and Deputy Magistrate...	9

BURDWAN

Magistrate and Collector ...	1	District Officer and Collector ...	1
Joint-Magistrate and Collector ...	1	Joint District Officer and Collector	1
Assistant Magistrate and Assistant Collector	2	Assistant Officer and Collector ...	1
Deputy Magistrate and Deputy Collector	12	Deputy Collector... ...	8
Sub-Deputy Collector ...	8	Sub-Deputy Collector ...	7
District and Sessions Judge ...	1	District and Sessions Judge ...	1
Sub-Judge	2	Assistant Sessions Judge with the powers of a District Magistrate and Sub-Judge ...	1
Munsiff	10	1st class Magistrate and Sub-Judge	3
		Munsiff and Deputy Magistrate ...	2

CHITTAGONG

EXISTING		*PROPOSED*	
Magistrate and Collector	1	District Officer and Collector	1
Joint-Magistrate and Collector	2	Joint District Officer and Collector	1
Assistant Magistrate and Collector	4	Assistant District Officer and Collector	3
Deputy Magistrate and Deputy Collector	9	Deputy Collector	6
Sub-Deputy Collector	8	Sub-Deputy Collector	7
District and Sessions Judge	1	District and Sessions Judge	1
Additional do.	1	Sub-Judge with the judicial powers of a District Magistrate and Assistant Sessions Judge	2
Sub-Judge	2	Sub-Judge and 1st class Magistrate	2
Munsiff	17	Munsiff and Deputy Magistrate	22

CHITTAGONG HILL TRACTS
(NON-REGULATION DISTRICT)

NO CHANGE

DACCA

Magistrate and Collector	1	District Officer and Collector	1
Additional Magistrate and Collector	1	Assistant District Officer and Collector	4
Assistant Magistrate and Collector	6	Deputy Collector	10
Deputy Magistrate and Collector	17	Sub-Deputy Collector	6
Sub-Deputy Collector	7	District and Sessions Judge	1
District and Sessions Judge	1	Sub-Judge with the judicial powers of a District Magistrate and Assistant Sessions Judge	2
Additional District and Sessions Judge	1	Sub-Judge with the powers of a 1st Class Magistrate	4
Judge Small Cause Court	1	Small Causes Court Judge with the powers of a 1st class Magistrate	1
Sub-Judge	3	Munsiff and Deputy Magistrate	30
Munsiff	21		

DARJEELING

(NON-REGULATION DISTRICT)

NO CHANGE

DINAJPUR

EXISTING		*PROPOSED*	
Magistrate and Collector ...	1	District Officer and Collector ...	1
Deputy Magistrate and Collector	7	Deputy Collector ...	4
Sub-Deputy Collector ...	4	Sub-Deputy Collector ...	4
District and Sessions Judge ...	1	District and Sessions Judge ...	1
Sub-Judge	1	Assistant Sessions Judge with the judicial powers of a District Magistrate and Sub-Judge ...	1
Munsiff	7	Munsiff and Deputy Magistrate	9

FARIDPUR

Magistrate and Collector ...	1	District Officer and Collector ...	1
Deputy Magistrate and Collector	9	Deputy Collector ...	5
Assistant Magistrate and Collector	1	Assistant District Officer and Collector	1
Sub-Deputy Collector ...	9	Sub-Deputy Collector ...	8
District and Sessions Judge ...	1	District and Sessions Judge ...	1
Additional District and Sessions Judge	1	Assistant Sessions Judge with the judicial powers of a District Magistrate and Sub-Judge ...	2
Sub-Judge	2	Sub-Judge with the powers of a 1st class Magistrate ...	2
Munsiff	14	Munsiff and Deputy Magistrate ...	18

HUGHLY

Magistrate and Collector ...	1	District Officer and Collector ...	1
Deputy Magistrate and Collector	9	Deputy Collector ...	4
Sub-Deputy Collector ...	8	Assistant District Officer and Collector	1
Assistant Magistrate and Collector	1	Sub-Deputy Collector ...	8
District and Sessions Judge ...	1	District and Sessions Judge ...	1
Additional Sessions Judge ...	1	Sub-Judge with the judicial powers of a District Magistrate and Assistant Sessions Judge ...	2
Sub-Judge	3	Sub-Judge with the powers of a 1st class Magistrate ...	4
Munsiff	12	Munsiff and Deputy Magistrate ...	15

HOWRAH

EXISTING		*PROPOSED*	
Magistrate and Collector ...	1	District Officer and Collector ...	1
Joint-Magistrate and Deputy Collector	1	Deputy District Officer and Collector	9
Deputy Collector ...	13	Sub-Deputy Collector ...	4
Sub-Deputy Collector ...	4	District and Sessions Judge (joint with Hughly)	
Sessions Judge joint with Hughly	1	Sub-Judge with the judicial powers of a District Magistrate	1
Sub-Judge joint with Hughly	1	Sub-Judge with the powers of a 1st class Magistrate ...	1
Munsiff	6	Munsiff and Deputy Magistrate...	8

JALPAIGURI

NO CHANGE

JESSORE

Magistrate and Collector ...	1	District Officer and Collector ...	1
Joint-Magistrate and Collector ...	1	Assistant District Officer and Collector	1
Assistant Magistrate and Collector	1	Deputy District Officer and Collector	7
Deputy Magistrate and Collector	11	Sub-Deputy Collector ...	3
Sub-Deputy Collector ...	4	District and Sessions Judge ...	1
District and Sessions Judge ...	1	Sub-Judge with the judicial powers of a District Magistrate and Assistant Sessions Judge ...	1
Sub-Judge	2	Sub-Judge with the powers of a 1st class Magistrate ...	2
Munsiff	12	Munsiff and Deputy Magistrate	15

KHULNA

Magistrate and Collector ...	1	District Officer and Collector ...	1
Deputy Magistrate and Collector	11	Deputy District Officer and Collector	6
Sub-Deputy Collector ...	6	Sub-Deputy Collector ...	5
District and Sessions Judge ...	1	District and Sessions Judge ...	1
Sub-Judge	2	Sub-Judge with the judicial powers of a District Magistrate and Assistant Sessions Judge ...	1
Munsiff	9	Sub-Judge with the powers of a 1st class Magistrate ...	2
		Munsiff and Deputy Magistrate	12

MALDA

EXISTING		*PROPOSED*	
Magistrate and Collector ...	1	District Officer and Collector ...	1
Deputy Magistrate and Collector	2	Deputy District Officer and Collector	1
Sub-Deputy Collector ...	1	Sub-Deputy	1
District and Sessions Judge (joint with Rajshahi)	1	District and Sessions Judge (joint with Rajshahi)... ...	1
Munsiff	1	Sub-Judge with the judicial powers of a District Magistrate	1
		Munsiff and Deputy Magistrate	1

MIDNAPUR 6046

Magistrate and Collector ...	1	District Officer and Collector ...	1
Additional Magistrate and Collector	1	Joint District Officer and Collector	1
Assistant Magistrate and Collector	3	Deputy District Officer and Collector	9
Joint-Magistrate and Collector ...	1	Sub-Deputy Officer and Collector	4
Deputy Magistrate and Collector	15	District and Sessions Judge ...	1
Sub-Deputy Collector ...	4	Sub-Judge with the judicial powers of a District Magistrate and Assistant Sessions Judge ...	1
District and Sessions Judge ...	1	Sub-Judge with the powers of a 1st class Magistrate ...	3
Sub-Judge	2	Munsiff and Deputy Magistrate	20
Munsiff	14		

MURSHIDABAD

Magistrate and Collector ...	1	District Officer and Collector ...	1
Deputy Magistrate and Collector	10	Deputy District Officer and Collector	6
Sub-Deputy Collector ...	6	Sub-Deputy Collector ...	5
District and Sessions Judge ...	1	District and Sessions Judge ...	1
Sub-Judge	1	Assistant Sessions Judge, District Magistrate and Sub-Judge ...	1
Munsiff	9	Sub-Judge with the powers of a 1st class Magistrate ...	1
		Munsiff and Deputy Magistrate...	13

MYMENSING

EXISTING		*PROPOSED*	
Magistrate and Collector ...	1	District Officer and Collector ...	1
Additional Magistrate and Collector	1	Joint District Officer and Collector	2
Joint-Magistrate and Collector ...	3	Assistant District Officer and Collector	1
Assistant Magistrate ...	1	Deputy District Officer and Collector	11
Deputy Magistrate and Collector	18	Sub-Deputy Collector ...	5
Sub-Deputy and Collector ...	6	District and Sessions Judge ...	1
District and Sessions Judge ...	1	Additional District and Sessions Judge	1
Additional District and Sessions Judge	2	Sub-Judge with the judicial powers of a District Magistrate and Assistant Sessions Judge...	3
Sub-Judge	2	Sub-Judge with the judicial powers of a District Magistrate	1
Munsiff	25	Sub-Judge with the powers of a 1st class Magistrate ...	3
		Munsiff and Deputy Magistrate ...	33

NADIA

Magistrate and Collector ...	1	District Officer and Collector ...	1
Deputy Magistrate and Collector...	10	Deputy District Officer and Collector	6
Sub-Deputy Collector ...	8	Sub-Deputy Collector ...	7
District and Sessions Judge ...	1	District and Sessions Judge ...	1
Sub-Judge	1	Sub-Judge with the judicial powers of a District Magistrate, Sub-Judge and 1st class Magistrate	1
Munsiff	9	Munsiff and Deputy Magistrate...	12

NOAKHALI

Magistrate and Collector ...	1	District Officer and Collector ...	1
Deputy Magistrate and Collector	8	Deputy District Officer and Collector	4
Sub-Deputy Collector ...	5	Sub-Deputy Collector ...	5
District and Sessions Judge ...	1	District and Sessions Judge ...	1
Sub-Judge	1	Sub-Judge with the judicial powers of a District Magistrate ...	1
Munsiff	10	Sub-Judge with the powers of a 1st class Magistrate ...	1
		Munsiff and Deputy Magistrate...	13

PABNA

EXISTING		*PROPOSED*	
Magistrate and Collector ...	1	District Officer and Collector ...	1
Deputy Magistrate and Collector	7	Deputy District Officer and Collector	4
Assistant Magistrate and Collector	1	Assistant District Officer and Collector	1
Sub-Deputy Collector ...	4	Sub-Deputy Collector ...	4
District and Sessions Judge ...	1	District and Sessions Judge ...	1
Sub-Judge	2	Sub-Judge with the judicial powers of a District Magistrate	1
Munsiff	8	Sub-Judge with the powers of a 1st class Magistrate ...	2
		Munsiff and Deputy Magistrate ...	10

RAJSHAHI

Magistrate and Collector ...	1	District Officer and Collector ...	1
Assistant Magistrate and Collector	1	Assistant District Officer and Collector	1
Deputy Magistrate and Collector	7	Deputy District Officer and Collector	3
Sub-Deputy Collector ...	4	Sub-Deputy Collector ...	4
District and Sessions Judge ...	1	District and Sessions Judge ...	1
Sub-Judge	1	Sub-Judge with the judicial powers of a District Magistrate ...	1
Munsiff	4	Sub-Judge with the powers of a 1st class Magistrate ...	1
		Munsiff and Deputy Magistrate	6

RANGPUR

Magistrate and Collector ...	1	District Officer and Collector ...	1
Deputy Magistrate and Collector	10	Deputy District Officer and Collector	6
Sub-Deputy Collector ...	3	Sub-Deputy Collector ...	3
District and Sessions Judge ...	1	District and Sessions Judge ...	1
Sub-Judge	1	Sub-Judge with the judicial powers of a District Magistrate ...	1
Munsiff	8	Munsiff and Deputy Magistrate	10

TIPPERAH

EXISTING		*PROPOSED*	
Magistrate and Collector ...	1	District Officer and Collector ...	1
Additional Magistrate and Collector	1	Assistant District Officer and Collector	4
Assistant Magistrate and Collector	4	Deputy District Officer and Collector	8
Deputy Magistrate and Collector	13	Sub-Deputy Collector ...	9
Sub-Deputy Collector ...	10	District and Sessions Judge ...	1
District and Sessions Judge ...	1	Sub-Judge with the judicial powers of District Magistrate and Assistant District and Sessions Judge... ...	2
Sub-Judge	3	Sub-Judge with the powers of a 1st Class Magistrate ...	3
Munsiff	21	Munsiff and Deputy Magistrate ...	27

24-PERGANAS

Magistrate and Collector ...	1	District Officer and Collector ...	1
Joint-Magistrate and Collector ...	8	Joint District Officer and Collector	4
Assistant Magistrate and Collector	2	Assistant District Officer and Collector	2
Deputy Magistrate and Collector	23	Deputy District Officer and Collector	16
Sub-Deputy Magistrate and Collector	10	Sub-Deputy District Officer and Collector	9
District and Sessions Judge ...	1	District and Sessions Judge ...	1
Additional District and Sessions Judge	2	Additional District and Sessions Judge	1
Sub-Judge	5	Sub-Judge with the judicial powers of a District Magistrate and Assistant Sessions Judge ...	3
Munsiff	18	Sub-Judge with the judicial powers of a District Magistrate ...	1
		Sub-Judge with the powers of a 1st class Magistrate ...	7
		Munsiff and Deputy Magistrate	28

APPENDIX B

Comparative Statement of Expenditure and Saving before and after Separation based on the Distribution list of Appendix A

BACKERGANJ

It is proposed to take away the following officers from the existing staff. Roughly speaking the average will be as follows :

		Rs.
1	Additional District Magistrate	1,800
1	Assistant Magistrate and Collector	450
7	Deputy Magistrate and Collector	3,500
2	Sub-Deputy Collector at Rs. 150 per month ...	300
1	Additional District and Sessions Judge ...	2,500
	Total monthly saving. Rs.	8,550

The proposed additional appointments are :

1	Assistant Sessions Judge with judicial powers of a District Magistrate (Indian Judicial Service) ...	1,250
1	Assistant Sessions Judge with powers of a District Magistrate (Provincial Judicial Service) ...	1,200
1	Subordinate Judge with the powers of a 1st lcass Magistrate	600
8	Additional Munsiff and Deputy Magistrate ...	3,200
	Total monthly extra expenditure Rs.	6,250

Net monthly saving 8550-6250=Rs. 2,300

BANKURA

Saving in expenses :

3	Deputy Collector	1,500

Extra expenses:

1	Sub-Deputy Collector	175
1	Sub-Judge with the powers of a District Magistrate ...	1,000
1	Munsiff and Deputy Magistrate	300
	Rs.	1,475

Net saving Rs. 25

BIRBHUM

Saving in expenses:

		Rs.
2	Deputy Magistrate at Rs. 400 per month	800
Extra expenses:		
2	Munsiff	600
	Additional pay of the Sub-Judge with the powers of a District Magistrate	200
	Rs.	800

Net saving nil.

BOGRA

Saving in expenses:

3	Deputy Magistrate	1,200
Extra expenses:		
2	Munsiff and Deputy Magistrate	600
	Additional pay of one Sub-Judge with the powers of a District Magistrate	200
	Rs.	800

Saving Rs. 400

BURDWAN

Saving in expenses:

1	Assistant Magistrate and Collector	450
4	Deputy Magistrate and Collector	1,600
1	Sub-Deputy Collector	150
	Rs.	2,200

Extra expenses:

1	Assistant District and Sessions Judge with judicial powers of a District Magistrate and of a Sub-Judge (Indian Judicial Service)	1,250
3	Munsiff and Deputy Magistrate	900
	Rs.	2150

Saving Rs. 50

CHITTAGONG

Saving in expenses:		Rs.
1 Joint-Magistrate and Deputy Collector	...	900
1 Assistant Magistrate and Deputy Collector	...	450
3 Deputy Magistrate and Deputy Collector	...	1,500
1 Sub-Deputy Collector	...	150
1 Additional District and Sessions Judge	...	2,500
	Rs	4500

Extra expenses:		
2 Assistant Sessions Judge with the judicial powers of a District Magistrate and of a Sub-Judge (Indian Judicial Service)	...	2,500
5 Munsiff and Deputy Magistrate ...	...	1,500
	Rs	4000

Net saving Rs. 500

CHITTAGONG HILL TRACTS

NO CHANGE

DACCA

Saving in expenses:		Rs.
1 Additional District Magistrate ...	...	1,800
2 Assistant Magistrate and Collector ...	...	900
7 Deputy Magistrate and Deputy Collector	...	3,500
1 Sub-Deputy Collector and Magistrate ...	...	150
1 Additional District and Sessions Judge	...	2,000
	Rs.	8,350

Extra expenses:		
1 Assistant Sessions Judge with powers etc. (Indian Judicial Service) ...	...	1,250
1 Assistant Sessions Judge with judicial powers of a District Magistrate (Provincial Judicial Service)	...	1,200
1 Sub-Judge with powers of a 1st class Magistrate	...	800
9 Munsiff and Deputy Magistrate ...	...	3,600
	Rs.	6,850

Saving Rs. 1,500

DARJEELING

NO CHANGE

DINAJPUR

Saving in expenses :

		Rs.
3	Deputy Collector	1,500

Extra expenses:

1	Sub-Judge with powers of a District Magistrate (Provincial Judicial Service)	1,000
2	Munsiff and Deputy Magistrate	600
	Rs.	1,600

Net extra expenditure 100

FARIDPUR

Saving in expenses:

		Rs.
4	Deputy Collector and Deputy Magistrate ...	2,000
1	Sub-Deputy Magistrate and Collector ...	150
1	Additional District and Sessions Judge ...	2,500
	Rs.	4,650

Extra expenses:

1	Assistant District and Sessions Judge with the judicial powers of a District Magistrate (Indian Judicial Service)	1,250
1	Assistant Sessions Judge with powers etc. (Provincial Judicial Service)	1,200
4	Munsiff and Deputy Magistrate	1,200
	Rs.	3,650

Saving Rs. 100

HUGHLY

		Rs.
Saving in expenses:		
5	Deputy Magistrate and Collector	2,000
1	Additional District and Sessions Judge	2,000
	Rs.	4,000
Extra expenses:		
1	District and Sessions Judge	1,250
1	Assistant Sessions Judge with judicial powers of a District Magistrate	1,200
1	Sub-Judge with 1st class power	600
3	Munsiff and Deputy Magistrate	900
	Rs.	3,950

Saving Rs. 50

HOWRAH

		Rs.
Saving in expenses:		
1	Joint-Magistrate	900
4	Deputy Magistrate and Collector	1,600
	Rs.	2,500
Extra expenses:		
1	Assistant Sessions Judge and District Magistrate (Indian Judicial Service)	1,250
2	Munsiff and Deputy Magistrate	600
	Rs.	1,850

Saving Rs. 650

The Salary of a Sub-Judge with the powers of a 1st Class Magistrate whose services will be available for Hooghly, as well has been debited to Howrah.

JALPAIGURI

NO CHANGE

JESSORE

Saving in expenses :

		Rs.
1	Joint-Magistrate	700
4	Deputy Magistrate	2,000
1	Sub-Deputy Collector and Magistrate	150
		Rs. 2,850

Extra expenses:

1	Assistant District and Sessions Judge with powers of a District Magistrate (Indian Judicial Service) ...	1,250
3	Munsiff and Deputy Magistrate	1,200
		Rs. 2,450

Saving Rs. 400

KHULNA

Saving in expenses :

5	Deputy Magistrate and Collector	2,000
1	Sub-Deputy Magistrate and Collector ...	150
		Rs. 2,150

Extra expenses :

1	Sub-Judge with powers of a District Magistrate ...	1,000
3	Munsiff and Deputy Magistrate	900
		Rs. 1,900

Saving Rs. 250

MALDA

Saving in expenses :

1	Deputy Magistrate and Collector	500

Extra expenses:

Sub-Judge with powers of a District Magistrate ...	1000

Extra expenditure 500

MIDNAPUR

			Rs.
Saving in expenses:			
1	Additional District Magistrate ...	...	2,250
6	Deputy Magistrate and Collector ...	...	3,000
1	Assistant Magistrate and Collector ...	...	450
		Rs.	5700
Extra expenditure:			
1	Assistant Sessions Judge with powers of a District Magistrate (Indian Judicial Service) ...	...	1,250
1	Sub-Judge with powers of a 1st class Magistrate	...	600
6	Munsiff and Deputy Magistrate ...	...	2,400
		Rs.	4,250

Saving Rs. 1.450

MURSHIDABAD

Saving in expenses:			
4	Deputy Magistrate and Deputy Collector	...	2,000
1	Sub-Deputy Magistrate and Collector ...	...	175
		Rs.	2,175
Extra expense:			
1	Assistant Sessions Judge with powers of a District Magistrate (Indian Judicial Service) ...	...	1,250
3	Munsiff and Deputy Magistrate ...	...	900
		Rs.	2,150

Saving Rs. 25

MYMENSING

Saving in expenses:

			Rs.
1	Additional Magistrate ...	...	1,800
1	Joint-Magistrate ...	...	700
7	Deputy Magistrate and Deputy Collector	...	2,800
1	Sub-Deputy Magistrate and Collector ...	...	150
1	Additional District and Sessions Judge ...	...	2,000
			Rs. 7,450

Extra expenses:

1	Assistant District and Sessions Judge (Indian Judicial Service)	...	1,250
1	Assistant District Sessions Judge (Provincial Judicial Service) ...	...	1,200
1	Sub-Judge with the powers of a District Magistrate ...	...	1,000
1	Sub-Judge with powers of a 1st class Magistrate	...	600
8	Munsiff and Deputy Magistrate	...	3,200
			Rs. 7,250

Saving Rs. 200

NADIA

Saving in expenses:

4	Deputy Magistrate and Deputy Collector	...	2,000
1	Sub-Deputy Collector ...	...	150
			Rs. 2,150

Extra expenses:

1	Sub-Judge with the powers of a District Magistrate (Provincial Judicial Service) ...	...	1,000
3	Munsiff and Deputy Magistrate ...	...	900
			Rs. 1,900

Saving Rs. 250

NOAKHALI

Saving in expenses:

4	Deputy Magistrate and Deputy Collector	...	2,000

Extra expenses:

1	Sub-Judge with powers of a District Magistrate	...	1,000
3	Munsiff and District Magistrate ...	...	900
			Rs. 1900

Saving Rs. 100

PABNA

		Rs.
Saving in expenses:		
3	Deputy Magistrate and Collector	1,500
Extra expenses:		
1	Sub-Judge with powers of a District Magistrate ...	1,000
2	Munsiff and Deputy Magistrate	600
		Rs. 1,600

Extra expenditure Rs. 100

RAJSHAHI

Saving in expenses:		
4	Deputy Magistrate and Deputy Collector ...	2,000
Extra expenses:		
1	Sub-Judge with powers of a District Magistrate	1,000
2	Munsiff and Deputy Magistrate	600
		Rs. 1,600

Saving Rs. 400

RANGPUR

Saving in expenses:		
4	Deputy Magistrate and Deputy Collector ...	2,000
Extra expenditure:		
1	Sub-Judge with powers of a District Magistrate ...	1,000
3	Munsiff and Deputy Magistrate	600
		Rs. 1,600

Saving Rs. 400

TIPPERAH

Saving in expenses:		
1	Additional Magistrate	2,250
5	Deputy Magistrate and Deputy Collector ...	2,000
1	Sub-Deputy Magistrate and Collector	150
		Rs. 4,400
Extra expenditure:		
1	Assistant Sessions Judge with powers of a District Magistrate and Sub-Judge (Indian Judicial Service) ...	1,250
1	Assistant Sessions Judge with powers of a District Magistrate and Sub-Judge (Indian Provincial Service)	1,200
6	Munsiff and Deputy Magistrate	1,800
		Rs. 4,250

Saving Rs. 350

24-PERGANAS

Saving in expenses:		Rs.
4	Joint-Magistrate	3,600
7	Deputy Magistrate and Collector	3,500
1	Sub-Deputy Magistrate and Collector ...	150
		Rs. 7,250
2	Additional District Sessions Judge and District Magistrate (Indian Judicial Service)	2,250
		Rs. 10,500
1	Assistant District and Sessions Judge and District Magistrate (Provincial Judicial Service) ...	1,200
1	Sub-Judge with powers of a District Magistrate ...	1,000
2	Sub-Judge with powers of a 1st class Magistrate ...	1,200
10	Munsiff and Deputy Magistrate	4,000
		Rs. 9,900

Saving Rs. 600

Calculation of Net Saving

		Net Saving	Net excess
1	Backerganj	2,300 ...	0
2	Bankura	25 ...	0
3	Birbhum	0 ...	0
4	Bogra	400 ...	0
5	Burdwan	50 ...	0
6	Chittagong	500 ...	0
7	Chittagong Hill Tracts	0 ...	0
8	Dacca	1,500 ...	0
9	Darjeeling	0 ...	0
10	Dinajpur	0 ...	100
11	Faridpur	700 ...	0
12	Hughly	50 ...	0
13	Howrah	650 ...	0
14	Jalpaiguri	0 ...	0
15	Jessore	400 ...	0
16	Khulna	250 ...	0
17	Malda	0 ...	500
18	Midnapur	1,450 ...	0
19	Murshidabad	25 ...	0
20	Mymensing	200 ...	0
21	Nadia	250 ...	0
22	Noakhali	100 ...	0
23	Pabna	0 ...	100
24	Rajshahi	400 ...	0
25	Rungpur	400 ...	0
26	Tipperah	350 ...	0
27	24-Perganas	600 ...	0
	Total	Rs. 10,200	Rs. 700

Total net monthly saving Rs. 9,500

Besides Rs. 9,500 there will be further saving in the salary of eight District and Sessions Judges by the creation of an Additional grade of Rs. 1,500. This saving will come up to at best Rs. 4,000 per month. The otal monthly saving will thus amount to Rs. 9.500 + Rs. 4,000 = Rs. 13,500.

The total yearly saving will be Rs. 1.62,000.

APPENDIX C

An Abstract of the Total Number of Officers Required According to Appendix A

District	District Judge	Assistant Sessions Judge with the powers of a District Magistrate and Sub-Judge	Sub-judge with the powers of a District Magistrate	Sub-judge with the powers of a 1st class Magistrate	Munsiff and Deputy Magistrate
24-Perganas ...	2	3	1	7	28
Tipperah ...	1	2	0	3	27
Rangpur ...	1	0	1	0	10
Rajshahi ...	1	0	1	1	6
Pabna ...	1	0	1	1	10
Noakhali ...	1	0	1	1	13
Nadia ...	1	0	1	1	12
Mymensing ...	2	2	1	3	33
Murshidabad...	1	1	0	1	12
Midnapur ...	1	1	0	3	20
Maldah ...	0	0	1	0	1
Khulna ...	1	1	0	2	12
Jessore ...	1	1	0	2	15
Howrah ...	0	0	1	1	8
Hughly ...	1	2	0	4	15
Faridpur ...	1	2	0	2	18
Dinajpur ...	1	0	1	1	9
Dacca ...	1	2	0	5	30
Chittagong ...	1	2	0	2	22
Burdwan ...	1	1	0	2	13
Bogra ...	0	0	1	0	9
Birbhum ...	1	0	1	0	8
Bankura ...	1	0	1	1	8
Backerganj ...	1	2	0	4	25
	23	22	13	47	364

It will be seen from the above table that the total strength of judicial officers necessary for the administration of justice for the Moffusil Districts will be as follows :—

District and Sessions Judges 23

Assistant Sessions Judges with the powers of District Magistrate and Sub-Judge 22

Sub-Judges with the judicial powers of the District Magistrate ... 13

Sub-Judges with the powers of the 1st class Magistrates ... 47

Munsiffs also exercising the powers of 1st 2nd and 3rd class Magistrates 364

The 23 District Judges should all be members of the Indian Judicial Service

Indian Judicial Service

Of the 22 Assistant Sessions Judges 9 may be recruited from the Indian Judicial Service and 13 from the Provincial Judicial Service

Of the 13 Sub-Judges exercising the Judicial powers of a District Magistrate 5 may be recruited from the Indian Judicial Service and 8 from the Provincial Judicial Service.

Of the 47 Sub-Judges with the powers of a 1st class Magistrate 5 may be recruited from the Indian Judicial Service and 42 from the Provincial Judicial Service.

Of the 364 Munsiffs and Deputy Magistrates 5 may be recruited from the Indian Judicial Service and 359 from the Provincial Judicial Service.

The grades of pay and the strength of each grade including the officers that will be necessary for the Presidency town will be as follows :—

District and Sessions Judge	23	Pay from Rs. 1500 to Rs. 3,000
Administrator General	1	
Assignee and Official Trustee	1	
Chief Presidency Magistrate	1	
Chief Small Causes Court Judge	1	
Judicial Secretary to the High Court	1	
Joint Judicial Secretary and Registrar High Court	1	
Second Judge Small Causes Court	1	
	30	
Assistant District and Sessions Judge and Deputy Magistrate	9	
Second Presidency Magistrate	1	
	10	Pay Rs, 1,250
District Magistrate and Sub-Judge	5	Pay Rs. 1,000
First class Magistrate and Sub-Judge	5	Pay Rs. 900
Munsiff and Deputy Magistrate	5	Pay Rs. 750
	55	

Provincial Judicial Service

Assistant District and Sessions Judge and Deputy Magistrate	13	Pay Rs. 1,200
Presidency Small Cause Court Judge	1	
	12	
District Magistrate and Sub-Judge	8	Pay Rs, 1;000
Presidency Small Cause Court Judge	2	
	10	

Sub-Judges	16		
Sub-Judges as Registrar, Small Cause Court	1	17	Pay Rs, 500
Sub-Judges	26		
Sub-Judge as Presidency Magistrate	3		Pay Rs. 600
Deduct 5 appointments of the Indian Judicial Service ...	5		
	Total	359	
Add one who will hold the office of a Presidency Magistrate ...	1		
	Total	360	

	Number
1st grade ... Rs. 500	51
2nd grade ... Rs. 400	71
3rd grade ... Rs. 300	120
4th grade ... Rs. 250	70
5th grade ... Rs. 200	48
	360

From the above it will appear that the following officers with the grades and pay mentioned below will suffice for the Presidency of Bengal including the Presidency Town

Gradation list of the Indian Judicial Service.

GRADE	PAY	NUMBER	REMARKS
1st Grade	Rs. 3,000	4 ...	2 as District Judges, 1 as Judicia Secretary and 1 as Administrator General. There will be some saving in the pay of the Administrator General.
2nd Grade	Rs. 2,500	10 ...	8 as District Judges, 1 as Official Assignee 1 as Chief S. C. Judge.
3rd Grade	Rs. 2,00	8 ...	4 as District Judges, 1 as Registrar, High Court.
4th Grade	Rs. 1.500	8 ...	6 as District Judges 1 as Chief Presidency Magistrate and 1 as 2nd Judge Small Cause Court.
5th Grade	Rs. 1,250	10 ...	9 Assistant District and Sessions Judge with the powers of District Magistrate and Subordinate Judge and 1 as 2nd Presidency Magistrate.
6th Grade	Rs. 1,000	5 ...	To exercise the Judicial powers of a District Magistrate and the powers of a Sub-Judge as a Civil Judge,

7th Grade	Rs. 900	5	...	To exersise the powers of a 1st class Magistrate as also of a Sub-Judge.
8th Grade	Rs. 750	5	...	To exercise the powers of a 2nd class and 3rd class Magistrate and of a Munsiff.

Gradation list of the Subordinate Judicial Service

GRADE	PAY	NUMBER		REMARKS
1st Grade	Rs. 1,200	14	...	12 will exercise the powers of an Assistant District and Sessions Judge, District Magistrate and Sub-Judge, and 1 as Presidency Small Cause Court Judge.
2nd Grade	Rs. 1,000	10	...	8 will exercise the Judicial powers of a District Magistrate, and the powers of a Sub-Judge, 2 will be Presidency Small Cause Court Judge.
3rd Grade	Rs. 800	17	...	15 will exercise the powers of a 1st class Magistrate and the civil powers of a Sub-Judge, 2 will be Presidency Small Cause Court Judge.
4th Grade	Rs. 600	29	...	26 will exercise the powers of a 1st class Magistrate and the civil powers of a Sub-Judge and 3 will be Presidency Magistrates.
		Total 69		

Gradation list of the Munsiffs and Deputy Magistrates

GRADE	SALARY	NUMBER		REMARKS
1st Grade	Rs. 500	51	...	50 will exercise the powers of a Munsiff and of a 1st class Magistrate 1 will be a Presidency Magistrate.
2nd Grade	Rs. 400	71	...	All these officers will exercise the powers of a Munsiff and of a 1st class Magistrate.
3rd Grade	Rs. 300	120	...	All these officers will exercise the powers of a Munsiff and of a 1st class Magistrate.
4th Grade	Rs. 250	70	...	All these officers will exercise the powers of a Munsiff and of a 1st class Magistrate.
5th Grade	Rs. 200	48	...	All these officers will exercise the powers of a Munsiff and of a 2nd and 3rd classs Magistrate.
	Total	360	...	

PART II

Cases and Appendices

Ratneswari Pershad Narayan Singh's Case—1897

2, Calcutta Weekly Notes 498

On the 17th December 1897, one Heralall complained before Mr. L., Sub-divisional Magistrate of Sewan against Gopi Kurmi and 7 others, servants of Babus Ratneswari and Brijnundun, who were wealthy zemindars, owning considerable property. The charge was under secs. 325, 323 and 379, I. P. C. for severely assaulting one Sajiban Lal, and committing other offences. The Sub-divisional Magistrate thereupon ordered a Police investigation into the case, and the complaint was entered as the first information and the Police began to investigate. Sajiban was sent to Sewan Hospital by order of the Joint-Magistrate where he died on 21st December. The *post mortem* report showed that the man died of "Pneumonia induced probably by the injuries on his chest and back." On the 18th December, Mr. L. went to the house of Ratneswari and, it was alleged, said to him, "you are concealing yourself after killing a man." [The Magistrate subsequently denied making the alleged statement.] On the same day Mr. L. visited the house of Babu Brijnundun, another accused in the case, and enquired where he was and on being told that he was out on business, the Magistrate was very angry. On the same day, the Magistrate commenced to examine some of the witnesses at the house of Hera Lall, informant, the question being put by the Joint-Magistrate himself, while the answers were recorded by the head constable. [The Magistrate stated in his explanation, in the High Court, that the Police examined and he only suggested questions.] While the said examination was going on, Mr. L. sent some chowkidars and a constable to Ratneswari with orders to bring him immediately *paidal* (on foot.) [The Magistrate however stated that he only ordered that Ratneswari should leave his elephant behind and he

did not send chowkidars or a constable.] Ratneswari on arriving at the place of investigation, was made to stand in the sun for nearly a couple of hours. Babu Brijnundun, the other accused, was also summoned and made to stand in the sun. [The Magistrate stated that he merely directed them to wait their turn for examination.] Ratneswari and Brijnundun were there examined, the questions having been put by the Magistrate and the answers recorded by the Head constable. On the 5th Feb. one Soudayar Ahir and four other servants of Ratneswari and Brijnundun were arrested and sent up by the Police before Mr. L. An application was now made for the transfer of the case from the file of Mr. L. to some other court, but this application was refused by the District Magistrate. Thereafter an application was made to Mr. L. for time to enable the accused persons to move the High Court, but this application was refused, although the Magistrate was bound by law to give time and the next day Mr. L. commenced the enquiry preliminary to commitment. On the 24th March the said enquiry was conducted and Soudayar Ahir and the four other persons were committed to take their trial in the Court of Sessions under secs. 304, 304/149, 380/109 and 148 I. P. C. On the 15th March Mr. L. issued warrants for the arrest of Ratneswari and Brijnundan to answer charges under secs. 304, 379, 147, 154, 155 I. P. C. On the 17th March the Magistrate issued written Proclamations requiring Ratneswari and Brijnundan to appear before him within 30 days under the provisions of sec. 87 of the Cr. P. C. [This Section applies to absconders] and on the 19th March he ordered attachment of tents, shamiana, elephants, palki, carriages, horses, chairs and other furniture belonging to the said two persons. On the 9th April Retneswari appeared and was released with two surities to the amount of Rs. 5,000. On the 26th April Brijnundan appeared and the Magistrate after recording the evidence of some witnesses in the case and after postponing the enquiry till 11th May examined the police

officer and sanctioned the prosecution of Brijnundan under sec. 124, I. P. C. and sent him in custody to the District Magistrate, who admitted him to bail with two surities of Rs. 5,000 each.

A Rule was obtained from the High Court calling upon the District Magistrate to show cause why the case should not be transferred from the file of Mr. L. to the court of some other Magistrate and proceedings were stayed pending the hearing of the Rule.

After the Rule was obtained from the High Court the Vakil for the petitioner sent a telegram to the Muktier in the court below informing him of the issue of the Rule and the stay of proceedings. This Muktier produced the telegram before the Magistrate and verbally applied for a postponement, but the Magistrate refused to look at the telegram and proceeded with the case. The same day the counsel in the case sent a telegram to the Muktier informing him of the Rule and the stay order. The next day a written application for a postponement was put in on the ground of the issue of the rule and the two telegrams were filed, but the Magistrate still proceeded with the case and nearly finished the enquiry.

The Rule was heard by Maclean, C. J. and Banerjea, J. who in making the Rule absolute observed that they were not very favourably impressed with the manner in which the petitioners were treated by the Magistrate. *They could not but feel that to some extent the zeal of the executive officer had outstripped the judicial impartiality of the Magistrate and that he had displayed at least some bias adverse to the applicants.*

As regards the refusal of the Magistrate to stay his hands after the aforesaid telegrams were produced before him the learned Judges observed as follows :—

"In acting as he did, in forcing on the case, as he obviously has, I think the Magistrate acted very injudiciously. He ought to have listened to the telegrams which, upon their face, bore the stamp of genuineness, and if he had any reason to doubt their authenticity, that doubt could readily have

been satisfied by a telegram to the Registrar of this court. It almost looks as if he wilfully shut his eyes, so as to avoid learning what this court had done. This haste to press the enquiry on, coupled with his action in the earlier investigation of the case, does, at least, suggest that his mind is not free from some bias in the matter, and that he does not approach the case with that judicial impartiality which is so essential to the true administration of justice I desire to state that it is of the most absolute importance, as regards the administration of justice in this province, that Magistrates should act with every loyalty towards the orders of the High Court, and if they are told that an order has been made by this court staying proceedings, they ought then and there to hold their hands, unless they have good ground for believing that the information given to them is false."

Surja Narayan Singh's Case—1900

5, Calcutta Weekly Notes 110

On the 9th June, 1900 an information was lodged at the Madhepura Police Station, in the District of Bhagalpur, to the effect that Babu Surjanarayan, the manager of Babu Hansa Prasad, a wealthy and influential Zemindar of Bhagalpur, one Ram Jha, the Purohit (priest) of Babu Hansa Prasad and several others set fire to the house of the informant, a creature of a rival zamindar in bad terms with Babu Hansa Prasad, assaulted him and his brother and looted his moveable properties worth about Rs. 15 and thereby committed offences under sections 147, 380 and 436 of the I. P. C. The Police Inspector who investigated the case reported it to be false in B. Form. The said report being placed before the Sub-divisional Magistrate of Madhepura, the said officer passed an order upon it, viz. "I will hold a judicial enquiry on the 29th June, summon complainant and his witnesses for that day, issue notice to the accused to state their case if they so chose."

The enquiry however was held on the 25th instead of 29th and the Sub-divisional Magistrate examined four witnesses cited by the complainant and two others, of his own motion. On the 10th July the Sub-divisional Magistrate called for from the Police for an A Form (case true) and issued warrants against eight persons including Surjanarayan and Ram Jha and fixed 17th July for the hearing of the case. On the 19th July the accused persons appeared before the Magistrate who released them on bail of Rs. 100, each fixing 1st August for the case.

In the meantime the Sub-divisional Magistrate wrote to the District Magistrate asking for the appointment of the Government pleader to conduct the prosecution and according to the orders of the District Magistrate a pleader was actually engaged for the purpose.

The accused engaged two vakils practising at the District head-quarters who on the 28th July wired to the Sub-divisional Magistrate for the postponement of the case on the 6th August when they would be able to defend the accused. The Magistrate agreed to the postponement, provided the accused persons paid all costs incurred by the prosecution by reason of the postponement. In the result the Magistrate directed a sum of Rs. 65 to be paid by the accused as postponement cost. It may be mentioned that this sum is far in excess of what is usually paid to legal practitioner in Sub-divisions.

On the 6th August 8 witnesses for the prosecution were examined in chief, and the vakils for the defence asked for permission of the Court to reserve their cross-examination and were permitted to do so. Quite unaccountably the Magistrate without giving the defence pleaders an opportunity to cross-examine the prosecution witnesses or to call witnesses for the defence under section 208 of Cr. P. C. (to which they were entitled, there being an allegation of an offence under section 436 which was triable excusively by a Court of Session) and without even examining all the

prosecution witnesses examined the accused persons (a procedure that has often been condemned) framed charges against them under sections 147, 379, 476 of the I. P. C. To this very unusual procedure the accused persons objected but in vain.

The accused persons applied for copies of the statements of the prosecution witnesses made during the Police investigation, but the Magistrate refused copies without assigning any reasons for his refusal.

On the next day *i.e.*, on the 7th August the defence pleaders repeated their objections to the illegal procedure in framing the charges, pointing out that the accussed persons had been deprived of their right of discharge under section 209 of the Cr. P. C., by the action of the Magistrate and applied for 3 weeks' time to move the High Court for a transfer of the case to some other Court. Directly this application was made, the Magistrate arbitrarily withdrew the order of bail and sent the accused persons to *Hazut* inspite of the representation of the defence that the circumstances of the case had not changed since the previous day when the accused were on bail.

Immediately after passing this order remanding the accused to Hazut the Magistrate left the court at about 12-30 P. M., and went to his private residence. A petition for bail was sent to the Magistrate at his residence but was promptly refused.

The accused persons then moved the Sessions Judge of Bhagalpur and were finally released on bail of Rs. 500 each on the 20th August.

On the 22nd August before the record of the case came back from the Court of the Sessions Judge, Bhagalpur, where it had been sent in connection with the above named application for bail the Magistrate wanted to proceed with the case and on being asked for two weeks' further time he gave only 8 days' time fixing 30th August for the case.

The accused persons moved the High Court on the 28th of August and got a rule calling upon the District Magistrate of Bhagalpur to show cause why the case should not be transferred from the court of the Sub-divisional Magistrate to some other competent Court. Pending the hearing of the rule the High Court directed all further proceedings in the Court of Sub-divisional Magistrate to be stayed.

On the 30th of August the Muktear of the accused persons filed a petition before the Sub-divisional Magistrate informing him of the grant of the rule and stay of proceedings by the High Court and to this petition he attached the telegram which had been sent to him from Calcutta informing him about the issue of the rule and the stay of proceedings. The Magistrate took no notice of this petition and on the same day, in the absence of Babu Surjanarayan, one of the accused persons, examined another witness for the prosecution and committed all the accused persons to take their trial in the Sessions Court of Bhagalpur. This commitment order also was made in the absence of the accused. The Magistrate attempted to explain their commitment by suggesting that this course was directed by the Sessions Judge.

The High Court issued another rule calling upon the District Magistrate of Bhagalpur to show cause why the commitment should not be quashed. This rule along with the rule for transfer was heard by Prinsep and Handley, J.J. who observed as follows:—"We have no hesitation in saying that both the rules should be made absolute. There is practically no cause shown as regards the first rule (the rule for transfer). With reference to the second rule the Deputy Magistrate was clearly wrong in committing Surjanarayn in his absence and he is under a complete misapprehension in saying that the Sessions Judge had ordered a commitment. It is illegal to examine an additional witness in the absence of the accused. A postponement should certainly have been granted on the 30th of August in order

that the accused might have an opportunity of cross-examining the prosecution witnesses, with a view to obtaining, if possible, a cancellation of the charges and that the Magistrate might receive the orders of this court respecting the application for transfer. It was most injudicious of the Magistrate to proceed with the case after he had been credibly informed that a rule had been issued by this court. His precipitate action indicates still further his bias against the accused."

The commitment of the accused to the Sessions Court was quashed and the case was transferred from the court of the Deputy Magistrate.

The Hooghly Assault Case—1905

The facts of this case created much sensation in the town and district of Hooghly as the complainant in the case was Babu Jotindra Mohan Nundy, a zemindar belonging to the respectable Nundy family of Shahgunge in the town of Hooghly.

The accused in the case was Mr. C., the then Magistrate and Collector of Hooghly. The facts were that on the 22nd of February 1905, the above named zemindar, while walking from his house at Shahgunge to the house of Babu Raj Mohun Chatterjea, a medical practitioner in the town of Hooghly, had to cross a bamboo-bridge at the Kalitola burning ghat, and just when he was on the bridge he was suddenly accosted and struck by a European (who, he afterwards came to know, was the District Magistrate himself). On being struck he ran away, whereupon the said Mr. C. gave chase and dealt another blow with his stick on the left side of his neck.

The above named zemindar filed a petition of complaint under secs. 352 and 323, I. P. C. in the court of Mr. D., Joint Magistrate of Hooghly against the said Mr. C., Magistrate of Hooghly on the very day of the assault. The Joint Magistrate after examining the complainant on solemn

affirmation, recorded the following order in the order-sheet: "Complainant to prove his case on the 6th March, 1905."

That on the very same day, namely, the 22nd of February, 1905, the said Mr. C., the District Magistrate, who was himself the accused in the above case, recorded the following order in the order-sheet of the above case:

"I made the annexed note of the occurrence immediately after it occurred."

"I consider that it is *entirely unreasonable of the complainant to complain of an assault which he provoked and I plead that under Sec. 95 no offence has been committed.* The Joint Magistrate will make such inquiry as he thinks it and can, if he desires, summon my servant, Golam Hyder, who was present *and if he thinks that the case should come to trial, will send it to the nearest J. P. having jurisdiction, if in doubt, consult Government Pleader as to jurisdiction?*"

The High Court was thereafter moved by the complainant abovenamed for a transfer of the above case from the file of the Joint Magistrate of Hooghly to the file of any Magistrate in the District of the 24-Perganas and the Hon'ble High Court was pleased to issue a Rule. After the said Rule was issued Mr. C. compromised the case with the complainant.

Comment on the above case is superfluous.

Akhileswar Singh's Case—1905

10, Calcutta Weekly Notes 246

One Dharma Das Singh Rai, during his life time, made a gift of all his properties to his sister's son Akhileswar by a registered deed of gift and put him in possession of the properties. Subsequently the said Dharma Das tried to oust Akhileswar from the said properties. With this view he made an application to the Sub-Divisional Magistrate of Serampore praying that Akhileswar and some other persons might be bound down under sec. 107, Cr. P. C. and that a notice

under sec. 144, Cr. P. C. may issue against these persons restraining and prohibiting them from interfering in any way with the possession of the said Dharma Das. An *ex parte* order was thereupon passed under sec. 144, Cr. P. C. on the 22nd September, 1905. Thereupon Akhileswar made an application to the Sub-Divisional Magistrate asking him to rescind the order upon which the following order was passed: "Police to report under sec. 145, Cr. P. C." Subsequently the Sub-Divisional Magistrate passed the following order: "Takid report, under sec. 145, Cr. P. C. I will hold a local enquiry in my cold weather tour." Proceedings being drawn up against Akhileswar under sec. 145, Cr. P. C. he was called upon to put in his written statement as required by law. In the meantime Dharma Das, who practically got the Magistrate to initiate proceedings against Akhileswar, died (22nd Nov. 1905) and on the 1st December Akhileswar put in a petition before the Magistrate stating that Dharma Das was dead, that there had been no breach of peace, there was none at that time with whom there could be a breach of the peace and that it was not possible to have any occasion of the breach of the peace with a dead man. He therefore prayed that the proceedings might be dropped or at least a month's time should be given to him to file his written statement. On this application no order was passed. Akhileswar now went to Charpore to the house where Dharma Das lived before his death (this was a subject-matter of the gift) and performed the *Sradh* ceremony of Dharma Das without any disturbance by any one. On the 7th December, 1905 the Sub-Divisional Magistrate of Serampore went to Charpore and wished that Akhileswar should remove from the house immediately. Akhileswar remonstrated and asked for a written order of the Magistrate who said his verbal order was quite sufficient. The Magistrate the n ordered Akhileswar to remove immediately. Akhileswar was obliged to remove with his family from the house which was then entered into by the Magistrate and some police officers who put a lock *on*

its door. It was breakfast time when Akhileswar was compelled to remove from the house; he and his family had to eat their breakfast in an adjoining hut after vacating the house. Soon after Akhileswar brought it to the notice of the Magistrate that there were family idols in the house and that he was performing the *pujas* every day. The Magistrate paid no heed to this representation.

The Magistrate then made over (inspite of the remonstrances of Akhileswar) two out of the four milch cows left by Dharma Das to one Kamini, a mistress of Dharma Das and ordered her to occupy the house and also made over to her certain utensils which she identified as her own, although Akhileswar protested that they were the subject-matter of the deed of gift. The Magistrate next prohibited all the tenants of the Bhagjote from paying the produce rent to Akhileswar. It is to be noted that the Magistrate did all this by verbal orders and no written orders were passed.

In revision the High Court held that there was no justification for the orders in question and therefore set them aside.

Thakur Persad Singh's Case—1905

10, Calcutta Weekly Notes 775

There is a bazar called the Girwana Sonepurma in the district of Palamow. Of this the Government was said to be a 2 as. proprietor, in respect apparently of some khasmehal estate. Thakur Persad and his brother had a 2 as. share and Tirbani Singh had a 2 as. 17 gundas share and Amar Singh, whose estate had been taken over by Government under the Chota-Nagpur Encumbered Estates Act, and other co-sharers had the remaining share. The Collector of Palamow, therefore, as representing the Court of Wards, had an interest therefore in certain shares in the bazar.

The bazar had been leased out to Chamroo Shahoo for one year from 30th September, 1905 to 1st October, 1906 and

apparently a lease setting out the rates at which he was entitled to realise tolls was given to him.

On the 3rd December 1905 Mr. L., the Deputy Commissioner of Palamow acting in his capacity of District Magistrate, had Chamroo brought before him and took from him his lease and took down a statement made by him.

On the 13th December the same officer apparently examined Dhanuk Dhari Sahoo and took from him what purported to be a copy of the lease for the current year granted to Chamroo and also examined Shew Sankar Lall and took from him what purported to be a copy of the lease granted for the previous year, one Dost Mahammad being the lessee of the bazar for the said year.

The Deputy Commissioner then passed an order that the case should be put up before him on the 18th December with a copy of the lease granted to Chamroo. On the 19th December he recorded the following order:—"It appears that no copy had been kept in the office. In spite of this, from information received, it would appear that there are ample *prima facie* grounds for believing that an offence under secs 465 and 468, I. P. C. (Forgery and Forgery for the purpose of cheating) has been committed by Chamroo Shahoo and that he has been abetted therein by Thakur Singh, Tirbani Singh and Dost Mahammed and other actual shareholders of the Girwana bazar. I hereby order that a warrant on a bail of Rs. 1,000 each issue against each of the above named men for their production on the 6th January and that meantime, the Sub-Inspector file a list of witnesses for the Crown. A search-warrant for the production of the bazar chowkidar's book should be issued."

Apparently the case against Chamroo was that he had made two additions in his lease adding Hindi figure 1/4 after 3 seers in the case of the tolls leviable for ghee and grain, in two places in the lease.

Counsel for the accused persons requested the Deputy Commissioner to give them copies of the information or

which he had acted in issuing warrants against them. This was refused apparently because no such information existed.

Two rules were issued by the High Court calling upon the Deputy Commissioner to shew cause why the proceedings instituted against the accused persons under Secs. 465 and 468/109 I. P. C. should not be quashed as there were no sufficient reasons to justify such a prosecution, or in the alternative why the case should not be transferred to some other competent Court.

The Magistrat e Mr. L. in his explanation stated that the law nowhere laid down that he was bound to disclose the sources of his information before the trial began, he submitted that the reason for this rule was that the District Magistrate held a position that warranted the presumption that his action was well judged and warranted.

Their Lordships of the High Court held that they could not agree with the Magistrate that the law relieved him from at least recording the information on which he acted though it might not compel him to disclose the sources of that information. Their Lordships regretted that the tone of the Magistrate's explanation was wanting in respect both to the High Court and to himself.

Their Lordships further held that the Deputy Commissioner as Collector and as representing the Court of Wards which was a part proprietor in the bazar and in that capacity being a party to the lease granted to Chamroo, was directly interested in the prosecution. There was nothing in the record to show that the information, whatever it might have been, which he received, was not lodged to him as Collector, and if that were so, it was open to him as Magistrate to act on that information and proceed to issue warrants against the accused persons. Practically by *acting in such a way he was making himself a judge of his own case*, for the case, seemed to be that he with other co-proprietors granted a lease on certain terms to Chamroo and that Chamroo had tampered with that lease.

There being not sufficient evidence on the record to warrant a prosecution of the accused persons, the proceedings were quashed by the High Court.

In conclusion their Lordships suggested that if the Deputy Commissioner as representing the Court of Wards desired to proceed with the prosecution against any of the accused persons, he should follow the ordinary procedure and should have a proper complaint lodged stating the information and the grounds upon which it was desired to proceed and this might be filed on his behalf by the Government pleader or by some other officer subordinate to him as Collector.

Acting upon this suggestion the Government pleader of Palamow presented a petition purporting to be one under Sec. 200, Cr. P. C. against all the aforesaid accused persons against whom summons issued under secs. 465 and 468/109 I. P. C. Government pleader was examined in support of his petition.

The High Court in revision again set aside the proceedings against the accused persons on the ground that the complainant in the case, *viz.* the Government pleader had no personal knowledge and as none else was examined in support of the petition, there was nothing to show that there was any case for issuing summons against the accused persons and that in such circumstances the Court should satisfy himself upon proper materials that a case for issuing summons had been made out.

The Government pleader now applied to the Deputy Magistrate of Palamow in whose court the case against the remaining accused persons, *viz.*, Chamroo Shahoo and another was pending, that in view of the observations of their Lordships of the High Court set forth above (10 C. W. N. 1090) before any further action was taken in the matter, the Deputy Magistrate might be pleased to order a judicial inquiry into the complaint of the Government pleader so as to afford him an opportunity of producing such supplementary evidence as had been indicated by their Lordships.

Thereupon the case was made over to a Junior Deputy Magistrate for inquiry under Sec. 202 Cr. P. C. and report and this Magistrate having reported that Chamroo was guilty of forging table of rates summons again issued against him.

Chamroo moved the High Court and got a rule calling upon the Deputy Commissioner to show cause why the proceedings in the prosecution of the petitioner should not be quashed and why in the alternative the case should not be transferred to some Magistrate of an adjoining districts as the petition er was not likely to get a fair and impartial trial at Palamow.

This rule was subsequently made absolute by their Lordships of the High Court and the proceedings against Chamroo were quashed.

Their Lordships observed, "The proceedings were commenced on the complaint of the Government Pleader and he had no personal knowledge of the affair. The judicial inquiry resulted in a finding to the effect that Chamroo was guilty of forging the table of rates. But there are no materials on which the judicial inquiry is based so far as we can gather. Apart from this there was no complaint under Sec. 200 Cr. P. C. properly so called on which a judicial inquiry could be directed. The proceedings were illegal and we therefore set them aside."

Surendra Nath Banerjee's Case—1906

10, Calcutta Weekly Notes 1062

On the 14th and 15th April, 1906 the Bengal Provincial Conference was to have held its sittings at Barisal and in order to attend its meetings a large number of educated and influential gentlemen went as delegates from all parts of Bengal to Barisal. One of these was Babu Surendra Nath Banerjee who is well known throughout India. It may be mentioned for the benefit of our European readers that Babu Surendra Nath is the editor of the *Bengalee*, (a leading daily English newspaper published in Calcutta),

Chairman of the north Barrackpore Municipality, Secretary to the Indian Association and was for several years an elected member of the Bengal Legislative Council and was president of the Indian National Congress more than once. Mr. A. Rasul, M. A., B. C. L. (Oxon), the well-known Mahomedan Barrister of the Calcutta High Court, was the President of the Conference. The President was also accompanied by his wife, an well-educated European lady.

In order to conduct the President of the Conference to the pandal where the Conference was to be held, with the ceremony usual on such occasions Babu Surendra Nath and many other delegates assembled at a private compound known as Raja Bahadur's Haveli at Barisal on the afternoon of the 14th April. From there the President accompanied by his wife started in a carriage for the Conference pandal and Babu Surendra Nath and other delegates followed the carriage on foot in rows of two or three. After they had proceeded about 100 yards, one of the delegates came running up to Babu Surendra Nath and informed him that the police were indiscriminately assaulting with lathis the delegates who were some way behind. Babu Surendra Nath went back to find that the information was true and on meeting Mr. K., the District Superintendent of Police on the spot, told him "Why are you beating these men. They have done nothing wrong. If you think they have done anything wrong you may arrest them. I am willing to take the whole responsibility on myself. You may arrest me if you like." On this Babu Surendra Nath was arrested by Mr. K. without being told on what charge and for what offence he was arrested. Thereupon two other gentlemen, the Hon'ble Babu Bhupendra Nath Bose, an eminent solicitor of the Calcutta High Court and a member of the Bengal Legislative Council and Babu Moti Lal Ghose, Editor of the *Amrita Bazar Patrika*, (another leading daily newspaper published in Calcutta), who were also delegates and present with Babu Surendra Nath, offerred themselves to be arrested when they were told

by Mr. K. that his orders were to arrest Babu Surendra Nath alone. Babu Surendra Nath was then taken to the house of Mr. E., the District Magistrate of Backerganj. He was accompanied by Babu Behari Lal Ray, an honorary Magistrate and Zamindar, Babu Aswini Coomar Dutt, Zamindar and proprietor of a first grade College at Barisal and Pandit Kali Prosonno Kabyabisarad, Editor of a leading vernacular newspaper published in Calcutta. Babus Behari Lal and Aswini Coomar accompanied Babu Surendra Nath into Mr. E.'s room who at once shouted out at Babus Behari Lal and Aswini Coomar, "Get away, you are not properly dressed. I won't be insulted, you have not got *pugris* on" and these gentlemen left the room. Babu Surendra Nath was drawing a chair in the room to seat himself when Mr. E. suddenly shouted in an offensively loud tone, "Stand up, you are a prisoner." Babu Surendra Nath replied that he had not come there to be insulted and he remained standing. The Magistrate then began recording Mr. K.'s statement which chiefly consisted of answers to the questions put to him by the Magistrate himself. No information was given to Babu Surendra Nath as to the charge he was called upon to answer or for which he had been brought before him nor was told for what offence he was being tried. While taking down Mr. K.'s statement the Magistrate said, "This is disgraceful," referring to the conduct of Babu Surendra Nath as also to that of Babus Behari Lal and Aswini Coomar (who according to the Magistrate were not decently dressed not having had hats on when they came into the Magistrate's room.) Babu Surendra Nath protested against the Magistrate's remark as one that ought not to have come from the court. Whereupon the Magistrate said in a loud voice, "Keep quiet. This is contempt of court and I shall draw up contempt proceedings against you." The Magistrate then wrote something on a piece of paper which was not read over to Babu Surendra Nath nor was the purport stated to him and said to Babu Surendra Nath, "You are fined Rs. 200 for contempt of

court." Then at the suggestion of another European Magistrate who was in the room Mr. E. informed Babu Surendra Nath that if he apologised the fine would be remitted, but to this Babu Surendra Nath did not agree saying he had done nothing wrong. The District Magistrate in his explanation to the High Court afterwards stated that in the mean time, that is to say, after taking Mr. K.'s statement and before fining Babu Surendra Nath for contempt as aforesaid, he drafted an order fixing the case for the next day and ordering the release of the accused on bail, but that he did not proceed with the order (the reason as to why he did was not explained). Immediately after passing the aforesaid sentence of fine upon Babu Surendra Nath the Magistrate drew up proceedings against Babu Surendra Nath under sec. 107 Cr. P. Code directing him to give security for keeping the peace. The order directing security was at once made absolute and Babu Surendra Nath was asked to produce his surety. On Babu Behari Lal Ray offering to stand surety and Babu Surendra Nath protesting that he could not be bound down by an executive order and that a judicial order was necessary, nothing further was done in the matter that day and Babu Surendra Nath never heard of it again.

The Magistrate now took up and finished recording Mr. K.'s statement which had yet remained unfinished. It appears from Babu Surendra Nath Banerjee's petition and affidavit in the High Court that the Magistrate did not record Mr. K.'s statement that when Mr. K. saw Babu Surendra Nath, he was doing nothing and was not shouting *Bande Mataram*,—apparently because such statement was favorable to the accused. Babu Surendra Nath was now asked what he had got to say. He made a statement and prayed for an adjournment in order to have legal assistance to cross-examine Mr. K. and to enter upon his defence. The Magistrate refused the adjournment inspite of the fact that the day was a close holiday.

The Magistrate then told Babu Surendra Nath that he was fined Rs. 200 under sec. 188 I. P. Code for disobedience of an order duly promulgated by a public servant.

There was an appeal to the Sessions Judge of Backerganj against the conviction for contempt of Court and another against the conviction under sec. 188 I. P. Code. The appeal against the conviction for contempt was dismissed and with reference to the other appeal the case was sent back to the first Court for the cross-examination of Mr. K. and for taking further evidence. Babu Surendra Nath moved the High Court against the conviction for contempt of Court. The conviction was set aside. In the contempt of Court proceedings read before the District Magistrate of Backerganj was only as follows—"Babu Surendra Nath produced before me as a prisoner arrested in course of an affray with the Police was repeatedly ordered by me to keep silence while I was passing order in his case after the case was decided. As he disobeyed (T. E. 17-4) I ordered him under sec. 480 Criminal Procedure Code to pay under sec. 228 I. P. Code a fine of Rs. 200 or in default to go to jail for a week T. E. 14-4-06 given an opportunity for apologising but refuses. T. E. 14-4-06."

There was nothing else on the record except the above, the table of contents and the title page. The judgment of the Sessions Judge was subsequently added to the record.

With reference to the words "As he disobeyed T. E. 17-4" which were interpolated (*i.e.* added illegally in the absence of the accused) the High Court (Mittra and Holmwood J. J.) were pleased to hold as follows :—

"In considering this case we must omit from the proceedings the words "As he disobeyed T. E. 17-4" as they were added and added very improperly three days later *viz* on the 17th April. No Magistrate can add to or alter the proceedings or judgment after they are signed and published. It is specially irregular when made in the absence of the accused and without notice to him."

With reference to the conviction for contempt of Court the High Court held that the conviction was illegal and the procedure adopted was bad all throughout. About the omission of the Magistrate to record the necessary particulars the High Court observed:

"The directions contained in sec. 481 of the Cr. P. Code are clearly mandatory and the omission to record the particulars mentioned in sec. 481 has always been held to be fatal to the proceedings. A full and clear record as contemplated by sec. 481 is not only a guarantee of the coolness and judicial temper of the judge but also affords materials for the appeallate court to proceed on. It is conceded and it cannot but be conceded that the proceedings of the District Magistrate in this case are too laconic and contravene the directions of the law."

The Barisal Delegates' Assault Case—1906

It would appear from Babu Surendra Nath Banerjea's case that the Police indiscriminately beat with *lathis* the delegates who had gone to Barisal to attend the Bengal Provincial Conference of 1906. This beating was in the presence and under the direction of Mr. K., the District Superintendent, Mr. H., his Assistant Superintendent and several other police officers of rank. The assault on 18th April 1906 on some of the delegates necessitated their removal to the hospital and some were thrown into a roadside tank after being assaulted.

Mr. Chaudhuri appeared before the Senior Deputy Magistrate, Babu J. K. G. of Barisal to make an application for process on behalf of Fani Bhusan Banerji, Brajendra Lal Ganguli and other delegates who had been severely assaulted by the Police on the way to the Conference pavilion. The court was crowded to suffocation. Counsel, in opening the case, submitted a written petition of complaint, and submitted that after the occurrence those assaulted went to the Thana to

lodge a complaint. The Police, however, refused to record the first information, and referred the complainants to the Court. He therefore applied for process against the accused who would be identified. He also applied for facilities for the identification of others, as the complainants had come from Nuddea, Sylhet and other districts.

Court.—The standing order on me is to record the complaints and send them up to the Magistrate.

Counsel.—Such standing orders are not known to law.

Court.—My power of receiving complaints come from the Magistrate.

Counsel.—As Magistrate, you are to follow the legal procedure, I cannot take notice of any standing order not in accordance with law.

Court.—Two accused are Europeans, I can't try them.

Counsel.—You may not try them but you can issue process against them. You can hold an inquiry yourself or depute another officer for the purpose.

Court :—Have you no objection to the case being inquired by the Inspector of Police ?

Counsel.—I would prefer a Deputy Magistrate.

Court.—The order delegating power to me by the Magistrate is that I am to record the complaints and then refer to the Magistrate. I understand he wishes to withdraw the case from my file. My duty is of a clerical nature. That is what I have been ordered to do in this matter. My hands are not quite free.

Counsel.—Of course I quite appreciate your difficulties and I quite sympathise with you. I submit to this procedure under protest.

After this the three complainants were examined.

Fani Bhusan stated that Mr. K. had assaulted him. About twenty-five constables were beating him. He saw Chitta Ranjan beaten. He himself was thrown into the tank.

Brajendra stated he was at the gate of the Raja Bahadur's compound when the Police charged him and other delegates

with *lathis*. In trying to protect his head, his hand was injured. He was struck on the head, and he fell down bleeding and was carried inside and attended by a doctor. He was then taken to the Thana where enquiry was refused. He was next taken to the hospital. The Assistant Surgeon dressed his wounds.

The third complainant, Satis Chander Mukherjee, stated that he was carrying copies of the presidential speech with instructions not to part with any till it was actually delivered. One European Police officer on horseback pressed him against the hedges on the road-side and snatched away some copies despite his protest.

After the examination, Counsel asked for process.

The Court :—The order of the Magistrate is to submit the papers to him.

Counsel :—Before doing so, you are bound to issue process as there is a *prima facie* case before you. You must record an order either under section 202 or section 204 before sending the records to the Magistrate.

Court.—I shall only submit the records to him for orders without any remarks of my own.

Counsel.—I object to that as it is contrary to law.

Court :—You may state your objection in the petition, I shall put it in with the records.

After this, the records were sent to the Magistrate's house through the Peshkar. Counsel, the pleaders, complainants and witnesses accompanied the Peshkar and went to the Magistrate's private room.

The Peshkar returned with the following order, noted on the petition :—" Complaints dismissed and struck off. "

Fani Bhusan Banerjee, one of the complainants, now moved the High Court against this extraordinary order of the Magistrate dismissing his complaint and prayed for an inquiry into the matter. Their Lordships held that the action of the District Magistrate was in contravention of the law and the direction to the Deputy Magistrate to submit all

complaints to the District Magistrate for passing orders was clearly illegal. The case was sent back to the Deputy Magistrate to be dealt with according to law.

On the case coming back to the Deputy Magistrate, he took some evidence but dismissed the complaint illegally.

Once again the matter went up to the High Court when their Lordships observed: "We have tried too much of Barisal Judicial dishonesty," and, while directing a further inquiry into the matter, transferred the case to Khulna, a neighbouring District for trial.

Rash Behari Mondol's Case—1908

Indian Law Reports, 35 Calcutta, 1076

Babu Rash Behari Mondol was a Zemindar of Madhepura in the District of Bhagalpore and owned considerable property there. In 1901 some unpleasantness arose between him and Babu S., the Sub-divisional Magistrate of Madhepura, and shortly after proceedings under sec. 107 Cr. P. C. were instituted against his servants by the said Magistrate which ended in their being discharged on the case being transferred to another Magistrate for trial.

In December, 1905 the uncle of Babu S. became the Sub-divisional Magistrate of Madhepura and Babu Rash Behari became involved in criminal prosecutions instituted by the said Magistrate in 1906 and 1907 which were transferred to Monghyr and ended ultimately in his favour.

On January 17, 1908 a complaint was laid before the same Magistrate by one Tufani Shahu against Babu Rash Behari under secs. 330 and 342 of the I. P. C. (voluntarily causing hurt to extort confession and to compel restoration of property and wrongful confinement). This case was transferred by the High Court to Monghyr for trial. It may be noted that the order of the transfer of cases in the aforesaid instances was made by the High Court so that Babu Rash Behari might get a fair and impartial trial which the High Court was of opinion would not be had at Madhepura owing to

the attitude of the District and Sub-divisional Magistrates. On February 16, 1908, Mr. L., the District Magistrate of Bhagalpore, who, it was alleged, was encamped about two miles from Babu Rash Behari's place of residence, issued search-warrants and caused a search of his house and of his kutcharies at other places and of the houses of some of his servants to be made by the police who seized and removed a large quantity of papers connected with his zemindary. These papers were kept in the Sub-divisional Office at Madhepura. On the 28th instant Babu Rash Behari moved Mr. L., the District Magistrate for the return of the documents taken by the Police, alleging that there were settlement papers and other documents among them which were necessary for the purpose of certain pending and contemplated civil suits. The District Magistrate, by his order dated the next day, directed that such papers as were not required for the purpose of the enquiries about to be made, might be returned, but if any such paper was considered by the Inspector of Police as essential for the purpose of the enquiries, Babu Rash Behari was to get a certified copy of it. He also noted that Babu Rash Behari's pleader had assented to this arrangement.

On April 11, Babu Rash Behari applied to the Sub-divisional Officer of Madhepura for the unconditional return of the papers disclaiming any authority, on the pleader's part to accept the condition imposed by the District Magistrate. On the 15th April Babu Rash Behari sent a letter through a Calcutta attorney to Mr. L., the District Magistrate, containing a notice under sec. 424 of the Cr. P. C. alleging that the search-warrants had been issued maliciously and illegally with the intention of oppressing and harassing him. On the 20th April, Babu Rash Behari received in Calcutta a notice, dated the 15th, from the Sub-divisional Officer of Madhepura, to take back all his papers, which had been seized. A notice signed by the Sub-divisional Officer, dated the 26th, was served on a servant of Babu

Rash Behari at Madhepura intimating that the delivery of the papers would be made on the 29th at Murho. On the same date, the Sub-divisional Officer accompanied by a Deputy Magistrate, the Sub-Registrar, the Inspector of Police and others went to Babu Rash Behari's house at Murho and 77 bundles of papers were counted out in the presence of a servant of Babu Rash Behari and a receipt taken. Just after the delivery was made the Deputy Magistrate then and there read out seven search-warrants issued by the District Magistrate the day before and all the bundles were put back in boxes and loaded on three carts and a police guard was left in charge of the same at Babu Rash Behari's *darwaza*. On the following three days the Deputy Magistrate came and inspected some of the papers and took them away leaving the rest behind and removing the guard.

It appeared from the order-sheet that the District Magistrate acting on the information of one Hansi Mondol, received on the 14th February, which he had duly recorded, took cognisance on the 28th April under sec. 190 (i) (c) of the I. P. C. of an offence under sec. 420 I. P. C. alleged to have been committed by Babu Rash Behari and directed the issue of a search-warrant for the production of a certain document. This delay in taking cognisance is unusual and extraordinary nor is it usual for a District Magistrate to take cognisance of offences or hear complaints. There were six other orders of the same date by the same Magistrate in which he purported to have received informations (which were also recorded) from six other persons, and took cognisance of them under sec. 190 (i) (c) against Babu Rash Behari, under secs. 384, 384/511, 403, 420, 505, 506 of the I. P. C. respectively. In each of the six orders he directed the issue of search-warrants, and summonses were issued in all cases and the 9th May was fixed for hearing of the cases. Babu Rash Behari failing to appear on this date the District Magistrate directed his prosecution under sec. 174 I. P. C., but this order was set aside by the High Court by consent.

Babu Rash Behari applied for copies of the informations against him but was only furnished with copies of the order-sheets which did not contain the informations asked for.

The High Court was moved for a transfer of the cases to some other district on the ground that Babu Rash Behari would not get a fair and impartial trial before any officer at Bhagalpur. But the High Court ordered that a special officer should be deputed to deal with cases at Bhagalpur.

It may be noted that Babu Rash Behari was subjected to various other harassing proceedings and his whole trouble ceased on his consenting to be a disqualified proprietor and making over the management of his estate to the Court of Wards.

Rajendra Narayan Singh's Case—1912

16, Calcutta Law Journal, 467

Rajendra Narayan Singh, an elderly gentleman of about 51 years of age, who was a Zemindar with an annual income of Rs. 25,000 to 30,000 and an Honorary Magistrate of 20 years' standing, moved the High Court and obtained a rule calling upon the District Magistrate of Bhagalpore to show cause why the proceedings, under sec. 110 of the Cr. P. C. drawn up against him, should not be quashed as the facts alleged against him, did not fall within the scope of that section or in the alternative why the case should not be transferred to some other district.

The substance of sec. 110 Criminal Procedure Code is that whenever a Magistrate is informed that any person within his jurisdiction is (i) a habitual robber, house-breaker, or thief or (ii) a habitual receiver of stolen property knowing the same to be stolen or (iii) habitually protects or harbours thieves or aids in the concealment or disposal of stolen property or (iv) habitually commits mischief, extortion, or cheating or counterfeits coins, currency notes, or stamps or attempts so to do or (v) habitually commits or attempts to commit or abets the commission of, offences involving a

breach of the peace or (vi) is so desperate and dangerous as to render his being at large without security hazardous to the community, such Magistrate may require the person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding three years, as the Magistrate thinks fit to fix. This section is intended for habitual bad characters and habitual offenders.

The proceedings drawn up against Babu Rajendra Narayan set forth all the grounds for a prosecution, as are mentioned in sec. 110 and were based upon a police report, dated May 14, 1912 in which the police charged the petitioner with association with proved dacoits, and bad characters. The report gave a list of 16 cases of dacoity, wrongful confinement, theft etc. from 1891 to 1910 and a list of 5 cases of dacoity, wrongful confinement and assault within a period of 20 years ending in 1911 in which the petitioner Babu Rajendra was suspected to have taken part. The Police report further stated that the attention of the authorities was drawn to the atrocities of the accused in the year 1908 and after an inquiry set on foot by the District Magistrate of Bhagalpore, he was spared the prosecution on his promising to behave properly in future. No conviction in any case was alleged against Babu Rajendra.

The petitioner, Babu Rajendra in his petition to the High Court, stated that his troubles arose owing to the displeasure of the District Magistrate due to his brother's helping one Rash Behari Mondol when that gentleman was prosecuted by the District authorities as also for his refusal to appoint a European manager nominated by the District authorities.

The Rule came on for hearing before Carnduff and Imam, J. J. After hearing the arguments in the case the learned Judges differed, Carnduff J. being of opinion that the rule ought to be discharged and Imam, J. being inclined to make the rule absolute. The matter was therefore referred to a third Judge, Mookerjee J. who

agreed with Imam J. in holding that there was no justification for drawing up the proceedings against the petitioner.

It appeared, that on the 26th February 1908 the District Magistrate addressed a letter to the petitioner asking him to resign the post of Honorary Magistrate as it was undesirable that he should continue to hold his post on account of the past and the then existing tension between the petitioner and his tenants. In reply the petitioner submitted a representation in which he prayed that the Magistrate might reconsider the matter and change his opinion. This had no effect and on the 30th March 1908 the Sub-divisional Officer of Supaul (petitioner's Sub-division) recorded an order that in view of the strained relations between Babu Rajendra and his tenants, he should not attend the sitting of the Bench, till amicable relations were restored between him and his tenants. It was expressly stated however that there was no intention to cast any slur on the Babu Shaheb and the object of the order was to maintain "the dignity and lofty attribute which the title of Honorary Magistrate must confer upon those who enjoy the high privilege of sitting in that honourable position." After this order the petitioner submitted a representation on 22nd May 1908 to the District Magistrate Mr. L. in which he wanted to establish that the charge of oppression of his tenants was, if not wholly, unfounded, grossly exaggerated, and that the only thing that could be said was that there were several rent suits pending between him and his tenants. Steps were now taken for the institution of proceedings against the petitioner under sec. 110 of the Cr. P. C. and more than 200 witnesses were examined by the Sub-divisional Officer for this purpose but the matter was dropped on the petitioner's agreeing to appoint a competent European manager. In the Administration Report of the District, the District Magistrate stated with reference to one Babu Rash Behari Mondol (already referred to as the person who was helped by the brother of Rajendra Babu) that he was forced,

through the knowledge that he could not escape conviction for forgery, to apply to be declared a disqualified proprietor and it is there added that Babu Rajendra Narayan Singh through fear of similar criminal cases against him voluntarily appointed a reliable European manager and cut himself off from all management.

On the 12th November, 1908, Rajendra Narayan Singh placed the management of his estate in the hands of a European manager approved by the District authorities. After the appointment of Mr. Brae as manager matters went on with apparent smoothness for about a year. On the 14th September, 1909, however, the Sub-divisional Magistrate wrote to the petitioner a letter in which he complained that the reforms introduced by the manager has been nullified by his intrigues and warned him as to the consequences of a revival of the old friction. The petitioner interviewed the Sub-divisional Magistrate and the new District Magistrate Mr. H. and matters proceeded as before till 16th April, 1910. On that date the District Magistrate wrote to him, alleging his interference with the tenantry and with the management of the estate by the European manager, Mr. Brae. It was further stated that the manager was not allowed a freehand. The petitioner, thereupon, complained to the District Magistrate about the conduct and management of Mr. Brae who apparently submitted a statement to the Magistrate who thereupon wrote to the petitioner again on 10th May, 1910 and in this letter the Magistrate reminded the petitioner that the sole reason for Mr. Brae's appointment and the dropping for the time being, of proceedings under sec. 110, was that the causes of friction might be removed by the appointment of a European manager who should be allowed a free hand. The District Magistrate, Mr. H. further reminded the petitioner in this letter that the petitioner had made a definite promise to his predecessor Mr. L., in consequence of which the proceedings against the petitioner were held

in abeyance; then followed a threat that should the petitioner fail to keep his promise these proceedings would be at once revived. On receipt of this letter the petitioner asked for a copy of the report of Mr. Brae; this met with a prompt refusal on the 6th June, 1910.

Then followed an incident which indicates that the relation between the petitioner and the authorities was considerably strained. During the rains of 1910 the river Kosi was flooded and the houses of the petitioner were inundated; he appealed and prayed in vain to the manager and to the Sub-divisional Magistrate that he might be allowed to remove to one of his kutcharies. This request was refused on the 5th July, 1910. Shortly after this incident, Mr. Brae suddenly resigned and according to the petitioner's statement he resigned without rendering accounts to him. On the 20th October, 1910, the Sub-divisional Magistrate asked the petitioner to appoint Mr. Mussleback in the place of Mr. Brae. The petitioner did not accept the suggestion and appointed one Mr. Landale as his manager. The result was that on the 24th January, 1911 the Sub-divisional Magistrate wrote to him a letter in which he called upon him to explain at once why Mr. Landale had been appointed manager without the sanction and authority of the Collector. The petitioner was next asked by the Collector to retire from his estate and to get the names of his sons registered in the place of his own in the Collectorate. This suggestion of compulsory abdication could not however be carried into effect owing to legal difficulties in the way. Matters continued in this state till the closing months of 1911, when the petitioner found it necessary to dismiss Mr. Landale and appointed Babu Tej Narayan Singh, a retired police official as his manager. This appointment of Babu Tej Narayan Singh was according to the District Magistrate Mr. D. a contravention of the condition of dropping of proceedings under sec. 110 of the Cr. P. C. in 1908 namely, "the appointment of a competent European manager," and the proceedings under sec. 110 Cr. P. C. were therefore drawnup.

The High Court held that the proceedings drawn up against the petitioner under sec. 110 were not *bonâ fide* and the rule was therefore made absolute. In the concluding portion of his judgment Mookerjee J. observed: "The very fact that in 1908 the District authorities were of opinion that if Rajendra appointed a competent European manager, proceedings under sec. 110 might be safely abandoned, indicates plainly that at that time there could have been nothing against him of a really serious character and this view is confirmed by the treatment accorded to him by the authorities during the time which followed—a period of more than three years of strict discipline as it were passed under the guidance and control of a European Manager. The fact that he has recently refrained from appointing a European manager, does not render him liable to proceedings under sec. 110, the salutary provisions of which were enacted by the legislature with the purpose of protecting society from habitual offenders. They were unquestionably never intended to be applied to coerce landlords, however recalcitrant they might be, to adopt methods of management of their estate—the efficacy of which very indiscreetly perhaps they might not appreciate."

The Chapra Case—1899

In August 1899, Mr. T., the officiating District Magistrate of Chapra, issued orders to Zamindars and ryots to repair certain bunds. No remuneration was to be paid for the work or in other words the work was to be done by forced labour and orders were issued to the police to get the people to do the work. On the 19th August, Mr. C., an Assistant Superintendent of Police and Mr. S., the District Engineer went to a village called Fulwada to beat up recruits for the work on the bund. Among the villagers was one Nursing Singh, a constable attached to the Jalpaiguri Police (another district) then on sick leave.

Nursing refused this forced labour particularly as earth-work is considered disgraceful by his castemen (he was a high caste Rajput) and he also pleaded ill-health. Mr. C. threatened to procure Nursing's dismissal from the police service for refusing to work on the bund and on this Nursing was alleged to have snapped his fingers in Mr. C.'s face and said that he did not care for Mr. C.'s threats. This story was however disbelieved by the Sessions Judge.

Mr. C. then seized this man by his shoulders, turned him round, kicked his bottom and told him to go away. Nursing then retreated two or three yards and then it was alleged ran at Mr. C. Mr. S. hit him on the head with a rattan and Mr. C. struck him on the face with his fist causing to fall against at once. It was further alleged that Nursing, then called out to the villagers to use lathis. On being hit by Mr. C. for the third time the man fell down when Mr. C. sat on the man and thrashed him soundly. Mr. S. gave the man 6 or 7 cuts with his rattan on his bottom and back. On a villager interfering Mr. C. let go Nursing who after being severely hammered in this way escaped into the thicker part of the village. After a time a constable was sent after Nursing and he was forced to work on the bund for a short while. He was however let go on his providing a substitute, as he was ill.

In the evening Mr. C. returned to Chapra and related the incident of the fracas to the District Magistrate Mr. T. and the District Superintendent of Police Mr. B., and Captain M., the Civil Surgeon.

Next morning Nursing came to the Chapra hospital to be treated for his disease and on being enquired about his blackened eyes, told Captain M. of the incident of the previous day. The Captain immediately drove to the Chapra club and informed Mr. C. and proceeded from the club to the house of the District Superintendent and informed him. Mr. C. then drove to the hospital where he arrested Nursing and took him to the District Superintendent's house who in the mean-

time had sent an Inspector of Police after the man. Nursing was then threatened with prosecution by the District Superintendent for his conduct towards the Sahebs and asked to resign as a means to avoid the prosecution. This he refused.

On his refusal, Nursing was taken to the house of the District Magistrate Mr. T. by Messrs. B. and C. Nursing was left in the verandah and there was a deliberation in the District Magistrate's room by the three Sahebs as to under what sections the man could be prosecuted. The sections being determined Messrs. B. and C. returned to the verandah where Mr. C. drew up a report of the incident which was taken to the District Magistrate who then and there wrote an order directing the prosecution of Nursing under sections 353 and 186 Indian Penal Code for assaulting a public servant to deter him in the discharge of his duty and obstructing a public servant in the discharge of his public duties and made the case over to Maulvie Z. for disposal.

On the 21st August the Maulvie examined Mr. C. in chief and without permitting his cross-examination recorded the statement of the accused. On the 22nd Mr. S. was examined. The accused was then called upon to defend himself under section 186 Indian Penal Code, and the case was fixed for the 2nd September. After writing his orders, the Deputy Magistrate recorded an order to the effect that it occurred to him that he had better charge the accused under section 353 Indian Penal Code also. He accordingly sent for the accused but could not find him.

The next day, however, the accused attended and was charged under section 353 Indian Penal Code. Mr. C. was then cross-examined, but it appeared that several important statements made by this witness were not recorded by the Deputy Magistrate.

On the 2nd September the case for the prosecution was closed and the defence pleader declined to call any defence witnesses. The defence pleader then addressed the court.

The Deputy Magistrate then adjourned the case for reply by the prosecution to the 4th September. It may be observed that the prosecution has no right of reply under the law when no witnesses are called by the defence. The sole object of adjourning the case, was found by the Sessions Judge to be that the Deputy Magistrate wanted time to find a way out of the situation. He did not see how he could possibly convict the accused on the two charges before him and he did not dare to acquit.

On the 4th September Mr. B., the District Superintendent of Police appeared in court and was given a seat on the bench when he discussed the law and evidence with the trying Magistrate. Shortly after Mr. B. and Maulvie Z. adjourned to the private chambers of the District Magistrate with the records of the case and there discussed the case with him and the Court Sub-Inspector.

The trying Magistrate frankly admitted having previously discussed the case with the District Magistrate as he had done with reference to many pending cases. He did not even hesitate to confess that the purpose of such discussions was to ascertain what the District Magistrate might ask him to do so as to avoid future trouble so that the Magistrate may not find fault with him afterwards in case the Magistrate did not agree with his decisions. In the present case even the District Magistrate admitted having given hint to the trying Magistrate as to how he should decide it.

On the 5th September when the case was pending for judgment only, a new charge was framed under section 504 Indian Penal Code and the accused was informed that he would also have to defend himself under section 29 of the Police Act. On this date the defence pleader applied to cross-examine Mr. C. on the new charges. The order passed was that he had gone to Backerganj, a far away district and the accused must deposit his pay and travelling expenses. Even on this day Mr. B., the District Superintendent, sat on the bench by the side of the trying Magistrate and

the petition to summon Mr. B., Mr. T. and the Civil Surgeon as witnesses, was discussed and refused as vexatious.

The proceedings of the 5th September were followed by another adjournment with the record to the District Magistrate's room.

On the 7th September the case was taken up again and on this day the Government pleader appeared in the case for the first time and was given the right of reply notwithstanding the defence pleader's protest. On the next day judgment was delivered by the Maulvie convicting Nursing of offences under sections 352 read with 114, and section 504 of the Indian Penal Code and sentencing him to two months' rigorous imprisonment.

The same day when the Maulvie convicted Nursing, he recorded the following order on the complaint of Nursing against Messrs. C. and S. "This complaint is utterly without ground. I have found in the counter case that this complainant as accused in that case was the aggressor and that he was rightly served. I dismiss the complaint under section 203, Criminal Procedure Code." Nursing appealed to the Sessions Judge of Chapra against the order of conviction and sentence and along with the petition of appeal was filed an affidavit by the defence pleader regarding the conduct of the trying Magistrate as well as the District Magistrate. The Sessions Judge released the appellant on bail and sent a copy of the petition of appeal and of the affidavit to the District Magistrate, called for the trying Magistrate's explanation with regard to the allegations made against him in the affidavit and directed that in transmitting it, he would himself report upon the allegations so far as they affected himself. Acting under the orders or at all events with the approval of his executive superior, the Commissioner of Patna, the District Magistrate refused to submit any explanation. The Sessions Judge therefore examined both the trying Magistrate and the District Magistrate and

further examined Messrs. B., C., S. and the Civil Surgeon as he was empowered to do as an appellate court.

While the appeal was before the Sessions Judge th Commissioner betrayed a desire to hush up the case an sent a demi-official letter to the Sessions Judge to hear th appeal in camera. The trying Magistrate also wante to see the Judge on the pretext of paying his respects t him.

The Sessions Judge delivered a long judgment in whicl he totally disbelieved the prosecution story of insults anc assaults by Nursing, and, while acquitting him, exposed the entire scheme of the officers concerned to get poor Nursing into trouble.

With reference to Nursing's complaint which was dis missed by the Maulvie, the Sessions Judge observed tha it was to avoid this complaint by Nursing for the bruta assault committed on him, that proceedings against him were engineered by responsible officers of the District. Neither the evidence of the Maulvie recorded by the Sessions Judge nor anything on the record justified the Maulvie's statement to the effect that Nursing was the aggressor and that he was rightly served. On the contrary it seemed to the Sessions Judge that this man was very badly treated. The Sessions Judge at the same time ordered a further enquiry into the complaint of Nursing.

PART III

Mr. M. Ghose's Pamphlet

THE UNION

OF

Judicial and Executive Functions

IN

THE MAGISTRATES

OF

BRITISH INDIA OUTSIDE THE PRESIDENCY TOWNS.

A COMPILATION OF CASES ILLUSTRATING THE EVILS OF THAT UNION

IN BENGAL

1874–1873

BY

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Of Lincoln's Inn,
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High Court of Bengal.

Calcutta :
1913

INTRODUCTORY NOTE.

The recent agitation in England regarding the necessity of separating judicial from executive functions as regards the trial of criminal cases by Magistrates in India, and the publication of a Memorandum on the subject by the British Committee of the Indian National Congress in London, have suggested to me the desirability of publishing a compilation of a few striking cases which illustrate the evils of the present system. Such a compilation in order to be useful, ought not, in my opinion, to be published anonymously, but some one cognisant of the facts set forth should come forward to vouch for their accuracy, and to guarantee that every statement of fact made is strictly correct. I have accordingly thought it necessary to give my own name to this publication and to confine myself to giving summaries of such cases only as have passed through my own hands professionally or otherwise, and copies of the records of which I have myself read and preserved in manuscript or in print.

Within a very short time of my commencing practice at the Bar in Calcutta in 1867, I was much struck with the frequency of cases involving gross abuse of judicial power on the part of the Magistracy in the interior of Bengal, and I soon discovered that it was the system and not the individual officers concerned, which was primarily responsible for the frequency of these cases. Unfortunately I did not think of preserving my briefs until the year 1874, or I could have included several instances which occurred prior to that year, that facts of which in some respects were just as striking as any of those now given.

A period of 20 years, however, is long enough for my purpose, but I must guard against its being supposed that I have included all or nearly all the cases bearing on the subject in which I have been myself professionally engaged during these 20 years. I have omitted all petty cases of

almost every day occurrence, and I have likewise not included those which have occurred in the other Presidencies of India, or even in Bengal, the facts of which I am not personally in a position to speak to, but of which the newspapers have been full during the last 20 years.

It is not difficult to imagine how shocked an Englishman brought up in the pure and healthy atmosphere of English Courts of Justice, must feel when he reads the facts of any one of these 20 cases which are now presented to the public; but the most unfortunate feature in the whole of this controversy is that there are still many eminent members of the Executive Branch of the Indian Civil Service, who seek to minimise the evils of the present system, and to uphold it on various grounds of State policy. They have themselves been brought up and trained from their early youth under a system which they imagine gives them a hold over the population of this country, though such a system wholly militates against all English ideas of judicial fairness and propriety, and is utterly subversive of that confidence which the native population ought to feel in the purity of British Justice. On the other hand to the credit of the Service, it must be acknowledged that several equally eminent members of that body, though themselves brought up in the same way, have from time to time protested against this system, and strongly urged the very reform which we are now seeking. In a separate pamphlet, which I am placing before the public, will be found in a collected form, all the opinions I have been able to collect of numerous Anglo-Indian authorities extending over nearly a century (from 1793 to 1883), and these opinions both for and against the present system, will enable the reader to understand the history of this question in India.

In the present compilation I have thought it fit to omit the names of the several officers concerned and have described them throughout by their initials, because I do not wish it to be supposed that I have the least intention of exposing or attacking any individual officer. I am concerned only with

the system, and I believe the real objection on the part of those who seek to uphold the present system, is not based, as is sometimes alleged, on the ground of increased expenditure, but on an apprehension that the prestige and influence of District Magistrates are likely to suffer if they are deprived of all judicial powers. Some of the opinions collected by me will show that I am quite right in entertaining this belief. I would therefore draw attention to the cases in this compilation to show what is really meant by "the prestige and influence of the magistracy" by some of those who are strenuously opposed to any reform on this ground.

A perusal of these 20 cases will satisfy any unprejudiced mind that the tendency of a system under which such cases as these are possible, must be to demoralise the majority of youngmen whom England sends out to this country every year to administer justice. Nevertheless, I gladly take this opportunity of asserting that in spite of such a system, the early training which our young Civil Servants receive in a purer and healthier judicial atmosphere before they come out, enables some of them to resist the baneful influences incidental to the present system, and to become exemplary judges in after life, as well as to exhibit that thorough honesty of purpose and independence of the executive which are so essential for the efficient administration of justice.

I wish it were possible for me to say the same of a large class of my own countrymen brought up in this country, who are entrusted with the trial of the bulk of magisterial cases. The effect upon them of the present system is simply disastrous, and it is with great regret I confess, as the result of nearly 30 years' experience of the Criminal Courts in Bengal, that if I happened to be professionally engaged for the defence in a case in which I had reason to suspect that the District Magistrate was interested in the prosecution, I would unhesitatingly prefer that the case should be tried by a covenanted Subordinate Magistrate who had received his early training in England, rather than by a Deputy Magis-

trate brought up in this country. I am certain that 9 out of every 10 such subordinate Deputy Magistrates would feel bound to decide the case not upon the value of the evidence adduced, but according to the supposed wishes of the District Magistrate. A perusal of these cases will, I think, show that I have ample grounds for this opinion.

On a recent occasion the present Lieutenant-Governor of Bengal, Sir Alexander Mackenzie, while replying to an address presented to him by a public body is reported to have made the following remarks with reference to the demand for this reform :—

"All that the laborious collection of what they term 'scandalous incidents' proves is that young Magistrates of the present day are not always as judicious as men of riper experience and longer training might be expected to be * * * Far too much is sought to be made of occasional errors of judgment or crudity of operation due to inexperience." With reference to the above remarks, I think it right to say, that the District Magistrates concerned in these 20 cases are not generally young and inexperienced officers whose youthful indiscretions might be attributed to individual temperament or inexperience, but that with the exception of 2 or 3 instances, all the District Magistrates in these cases were senior officers of standing, and that some of them were even about to retire on pension. It is, I think, useless to urge that the present system is not directly and mainly responsible for such cases.

17, THEATRE ROAD,
CALCUTTA,
15th July, 1896

MANOMOHAN GHOSE.

NOTES of CASES illustrative of the danger of investing District Magistrates who are Executive Officers with judicial powers, and with powers of supervision over Subordinate Magistrates as regards the trial of Criminal Cases.

Case of Lal Chand Chowdry of Chittagong—1876

Babu Lal Chand Chowdry was a Municipal Commissioner and an Honorary Magistrate in Chittagong. The District Magistrate as Chairman of the Municipality had proposed the enactment of certain Bye-laws, to which several of the Municipal Commissioners, including Lal Chand Chowdry, were opposed; but eventually the Bye-laws were carried by the casting vote of the Chairman. Lal Chand Chowdry incurred the displeasure of the District Magistrate by opposing the Bye-laws. On the 24th April, 1876, a discussion took place at the Municipal Board regarding the proper construction of one of the Bye-laws relating to certain latrine arrangements for the town, and on a vote being taken Lal Chand Chowdry refused to vote, as he was altogether opposed to the scheme proposed by the Chairman. Three days afterwards Mr. K., the Chairman and District Magistrate, appointed Lal Chand Chowdry a Special Constable under the Police Act V of 1861, and directed him to watch twice during the day, and twice during the night, certain public latrines, as some of these had been burnt down, it was supposed, by incendiaries. Only those native members who were opposed to the Bye-laws were, however, subjected to this indignity, to which they all had to submit. Lal Chand Chowdry and other members were directed by the Chairman to attend meeting of a Financial Sub-Committee of the Municipality on the 1st May, 1876, and as Lal Chand entered the room in which the meeting was being held, he was peremptorily ordered by the Chairman,

in an insulting tone, to leave it. When he left, another member, Mr. Fuller, pointed out to the Chairman the impropriety of insulting a member in the manner Lal Chand Chowdry had been insulted. Whereupon the Chairman immediately threatened to have Lal Chand Chowdry arrested, saying, "I intended to insult him. I will issue a warrant against him and have him arrested. If you insist on having him at the table I must leave it." * This threat he proceeded to carry out the next day, after he found that Mr. Fuller and other members had declined to withdraw their motion for the repeal of the Bye-laws of which Mr. Fuller had then given notice. On the 2nd May, without any complaint or charge, and acting under his extraordinary powers, the Magistrate of the District issued a warrant in the first instance, for the arrest of Lal Chand Chowdry on charges under sections 143, 186, 189, 353, 505, 506 and 117 of the Penal Code, and Lal Chand Chowdry was arrested by the Police on the same day, and subsequently released on bail. The next day the Magistrate, Mr. K., proceeded to try the case himself, rejecting two petitions which the accused presented, praying for time to enable his Counsel, for whom he had telegraphed to come from Calcutta, and also for a transfer of the case to some other Magistrate. The evidence which Mr. K., recorded and which admittedly was in accordance with the information on the strength of which he had initiated the proceedings, was to the effect that after a certain meeting of the Municipality was over, Lal Chand had expressed his disapproval of the Bye-laws in strong language to some of his colleagues within the hearing of a number of men who had collected outside to know the result of the meeting. Mr. K., at the close of the case for the prosecution, framed three charges against the accused and called upon him for his defence. At this stage the Counsel for the accused arrived at Chittagong and moved the Sessions Judge to refer the proceedings to the High Court. The Judge made the order prayed for, remarking, "I have been myself through the

* *Mr. Fuller's affidavit.*

evidence and do not find any evidence in support of the charges framed. * * The very utmost that can be said is that Babu Lal Chand made use of some imprudent expression in the excitement of a discussion with other Commissioners regarding certain Bye-laws * *. It appears to me obvious that framing charges which are entirely unsupported by evidence, and calling on a defendant to answer to them, is unlawful." The Judge, however, being of opinion that the Magistrate should be given an opportunity of dropping these strange proceedings, before sending the case up to the High Court, caused a copy of his Judgment to be sent to the Commissioner and to the Magistrate, and the latter on receipt of the Judge's order expressed a wish to hear Counsel on behalf of the accused. The Counsel declined to enter into any defence, but simply pointed out to Mr. K. the illegality of his proceedings, whereupon Mr. K. dropped the case and acquitted the accused. The case caused considerable sensation at the time, and formed the subject of a strongly-worded resolution by the Lieutenant-Governor (Sir R. Temple), who ordered that Mr. K. should be degraded to the rank of a Joint-Magistrate and debarred for ever from being in executive charge of a district. Mr. K. was accordingly transferred to the Judicial Branch of the service, and was for many years a District Judge. The case subsequently went before the Government of India who considered the sentence of the Lieutenant-Governor, having regard to his findings, to be "lenient," but did not think it necessary to pass further orders.

This case also illustrates the danger of making the District Officer Chairman of the Municipality in the Mofussil.

CASE NO. 2

The Fenwa Cases—1876-77

These cases caused considerable sensation throughout Bengal in 1876-77, Mr. Webster, Manager of the Fenwa Tea Garden, had gone with a large body of men to cut a *bund* or embankment which the villagers had put up as they had a

right to do according to custom. The villagers in large numbers having raised an outcry against this act of oppression on the part of Mr. Webster, either he or one of his party (a European) fired his gun loaded with shot, and wounded several of the villagers; Mr. Webster's party then set fire to the sheds of the villagers and came away. On receipt of this information, Mr. Rattray, the District Superintendent of Chittagong, after investigating the case, arrested Mr. Webster and sent him up on various charges. Mr. Webster was tried by a Subordinate Magistrate, Mr. Badcock, who convicted Mr. Webster and his companion, Mr. Macdonald, of the offence of rioting, but let them off with a fine.* The matter would have ended there, but for the zeal of Mr. K., the District Magistrate. This officer apparently became highly enraged at his friend Mr. Webster, having been arrested by the District Superintendent, and he (Mr. K.) as head of the Police and as District Magistrate, wrote an elaborate memo. censuring Mr. Rattray for having arrested Mr. Webster. In this memo. Mr. K. of his own motion directed three distinct prosecutions against the villagers, although no one had complained against them. It so happened that these ignorant villagers who had been severely wounded, had deposed before Mr. Badcock in the case against Webster, that it was the *Burra* Saheb of the Garden who had fired, meaning thereby the accused. Webster's defence, however, was that though he had headed the riot, it was the *Chota* Saheb (Macdonald) who had actually fired the gun, and this defence was supported by the evidence of Macdonald, who was subsequently convicted by Mr. Badcock on his own statement. Mr. K., when reviewing the proceedings of Mr. Badcock which were not judicially before him, and writing the memo. above referred to, directed these wounded men to be prosecuted for perjury for having stated that the *Burra* Saheb had fired the gun! Mr. K. further directed the villagers to be prosecuted

* Webster was sentenced to pay a fine of Rs. 500 and Macdonald to pay a fine of Rs. 100.

for rioting in having resisted Mr. Webster, and for committing a public nuisance in having erected the embankment! The perjury and rioting cases were then made over by Mr. K. to Mr. Deputy Magistrate Sarson, who seeing the villagers undefended, put a few questions to Mr. Webster and his witnesses, the answers to which clearly showed that the charges could not be sustained. Mr. Webster it is said, informed Mr. K. that Mr. Sarson was likely to acquit the villagers. Mr. K. thereupon passed orders of his own motion, without any notice to the accused, transferring both the cases from the file of Mr. Sarson to that of the Joint-Magistrate Mr. V. who tried those cases as well as the nuisance case originated by Mr. K. and convicted the villagers in all the three cases, sentencing them in the perjury case to six months' rigorous imprisonment!! In the other two cases the villagers were sentenced to pay fines. The Sessions Judge having dismissed the appeal of the villagers, the cases were taken up by the Press in Calcutta, and Sir R. Temple, then Lieutenant-Governor, being convinced of the gross injustice which had been done to the ryots, directed the Legal Remembrancer to move the High Court for an enhancement of the sentences passed on Webster and Macdonald, and for the release of the villagers. A Bench of two Judges (Ainslie and Morris, J. J.), granted a rule calling upon Webster and Macdonald to show cause why the sentences passed on them by Mr. Badcock should not be enhanced, but declined to interfere on behalf of the ryots. An application was subsequently made by Counsel for the villagers before another Bench presided over by Mr. Justice Pontifex and Mr. Justice Birch, and those Judges ordered the villagers to be immediately released on bail. Subsequently all the cases were argued before three Judges of the High Court (Markby, Ainslie and Morris, J. J.), who sentenced Webster and Macdonald to two months' rigorous imprisonment in addition to the fines originally imposed, and quashed the conviction of the villagers in the rioting case on the ground that the Magistrate Mr. K., had acted illegally in

transferring it from the file of Mr. Sarson without hearing the accused, and also quashed the conviction in the nuisance case on the ground that the charge was unsustainable having regard to the facts found by the convicting Magistrate himself.

As regards the perjury case in which two of those Judges had once declined to interfere on the application of the Government, the Court without expressing any opinion on the merits, simply ordered the discharge of the prisoners, on the ground that even if guilty, they had been sufficiently punished—a decision which caused great public dissatisfaction at the time.

Few cases have caused greater scandal than the Fenwa cases, the facts of which are very briefly given above. But for the executive memorandum of Mr. K. (the District Magistrate) and his wholly unjust and indefensible action in the matter, no proceedings would have been taken against the villagers, and they certainly would not have been convicted or sent to jail if he had not at the last moment transferred the cases to a friend and Subordinate Magistrate, who probably felt himself bound to carry out the views of his official superior. Upon the facts found by the Joint-Magistrate himself no charge of rioting or nuisance was sustainable in law, and as regards the perjury, even if the ignorant and wounded villagers had misdescribed one European for another, no Magistrate, unless improperly influenced, would have sent them to prison for such a long term under the circumstances of the case.

CASE NO. 3

The Case of Barada Kant Roy—1877

An application was made by Counsel before Markby and Mitter, J. J., for the transfer of a case from the Court of the Deputy Magistrate of Patuakhali in Backergunj, in which a zemindar named Barada Kant Roy was one of the accused. One of the grounds for the transfer was that the Magistrate

of the District, Mr. B., had written to the Deputy Magistrate a letter to the effect that the accused ought to be sentenced to the maximum term provided for in the section under which they were charged! A certified copy of this letter was annexed to the petition to the High Court, the Deputy Magistrate having himself given a copy of the letter treating it as an official document. The case was transferred.

CASE NO. 4

The Murshidabad Fishery Case—1879

In April 1879 Mr. M., Collector and District Magistrate of Murshidabad, gave on behalf of the Government a lease of a certain fishery regarding which there had been some boundary disputes with the proprietors of a neighbouring fishery. The ostensible lessee was one Lahoree, but as it afterwards transpired, the real lessee was one of Mr. M.'s own subordinate ministerial officers, who could not have legally taken the lease in his own name. The nominal lessee soon afterwards preferred a charge of theft against certain fishermen on the allegation that they had caught fish within the boundaries of this fishery. This case was tried by a Bengali Deputy Magistrate. The fishermen who had been accused of theft stated they had been catching fish for many years past within the disputed fishery, and Mr. M.'s lessee having admitted that he had never been in actual possession of this portion of the fishery, the Deputy Magistrate called upon the complainant to show cause why his complaint should not be dismissed. The complainant then urged that as the Government was interested in the result of the case, the Government Pleader should be instructed to appear on his behalf. The Deputy Magistrate thereupon wrote to Mr. M. (who as Collector represented the Government) that "if he thought it necessary he might instruct the Government Pleader to appear for the complainant." Mr. M., however, did not think it necessary to instruct the Government Pleader, and passed a written order in Bengali, which ended thus:—"It

would be the duty of the Deputy Magistrate to keep an eye over the interests and cases of Government." Notwithstanding the plain hint contained in this order, the Deputy Magistrate subsequently dismissed the charge of theft, holding that, as the complainant had never been in possession, no such charge could be maintained. The complainant then applied to Mr. M. in his capacity as District Magistrate to revive the case, alleging as one of the grounds "that in such cases where the Government is a party, it is the duty of its officers to increase the boundaries of the fishery in possession." Mr. M., finding that under the Indian Criminal Procedure Code of 1872, he had no power under the circumstances to revive a case in which the accused had been discharged by another Magistrate, refused the application, but at the same time, of his own motion, instituted a fresh judicial enquiry regarding the possession of the disputed fishery under a summary power conferred by the Criminal Procedure Code, which, however, can be exercised only when there are grounds for believing that a breach of the peace is imminent. It was admitted that no one had suggested to Mr. M. any probability of a breach of the peace, nor was he able himself to state any grounds in the proceeding which he was required by law to record, before he could have jurisdiction to enter upon such an enquiry. The fishermen protested against this new inquiry and against Mr. M. trying the case himself, he being manifestly interested in the result. Mr. M., however, refused to transfer the trial of the case to some other Magistrate, which could have been easily done, and although there was no evidence adduced on behalf of his own lessee regarding actual possession, directed, in spite of the contrary judicial finding of the Deputy Magistrate in the theft case, that the lessee should be maintained in possession as against everybody else. The fishermen then applied to the High Court to revise Mr. M.'s order, and that Court quashed it on the ground that Mr. M.'s proceedings were entirely without jurisdiction. Mr. M., however, rendered the decision of the High Court

nugatory by ordering the Police to prevent the fishermen from fishing in the disputed fishery and to arrest them on a charge of theft if they did so. He professed to do this in his executive capacity. It was alleged by Mr. M. that when he first gave the lease, he was not aware of the fact that his own subordinate officer was the real lessee, but it was admitted that he became aware of that fact before he instituted the inquiry into possession of the parties.

CASE NO. 5

The Purnea Intimidation Case—1881

In July 1881 a very extraordinary prosecution was started by Mr. W., District Magistrate of Purnea, the facts of which were published by the *Statesman* newspaper at the time.

A petition was presented by Mr. Taylor, Manager of the Estate of Raja Lilanund Singh, to Mr. W., in which it was alleged that the Raja had recently dismissed his Dewan Bhoobun Chunder Roy, who on hearing of his dismissal had remarked:—

"If any *fasad* (trouble or row) takes place, who will be there to prevent it when I am gone?" The offence consisted in having uttered these words. On receipt of this petition Mr. W. passed the following order:—

"Under Section 142, Criminal Procedure Code, I consider the offence suspected to have been committed should be enquired into. Warrant to issue for the arrest of Bhoobun Chunder Roy," The warrant issued specified an offence under section 506 (criminal intimidation), and the case was by a written order transferred to the file of a Bengali Deputy Magistrate on the 26th July 1881. After the transfer of the case, Mr. W. continued to pass written orders in the case for the guidance of the Deputy Magistrate, who said in open Court that he was bound to carry out Mr. W.'s orders. Mr. W. went on directing the Deputy Magistrate to examine the Raja at his own house, although the accused objected to it, and Mr. W. also passed orders for the adjournment of the

case, as if the officer trying the case was simply to carry out the orders of his official superior and had himself no voice in the matter at all. After the Raja had been examined at length, the following dialogue took place between the Deputy Magistrate and the Counsel for the accused, as reported in the *Statesman* of the 29th August 1881 :—

"Mr. Ghose then applied to the Deputy Magistrate to dismiss the case at once, on the ground that the evidence of the Raja did not disclose any sort of criminal offence, and that the Magistrate of the district had acted illegally and without discretion in issuing a warrant without any evidence in such an utterly frivolous case. His client ought not, therefore, to be put to the expense of being compelled to go through the form of hearing the evidence of all the witnesses in such a case.

"The Deputy Magistrate pointed out to Mr. Ghose that section 147 of the Criminal Procedure Code, (X of 1872) under which alone he could possibly act, contemplated a dismissal before the appearance of the accused. He therefore asked Mr. Ghose to point out under what section he was competent to dismiss the case at that stage.

"*Mr. Ghose*—The Legislature evidently did not contemplate that any Magistrate of the district would ever think of issuing process under such circumstances. It would be monstrous if a Magistrate on finding even after the appearance of the accused that the case did not disclose any offence, were still bound to go through the ceremony of recording the evidence of numerous witnesses who could not possibly carry the case any further.

"The Deputy Magistrate said he was bound by the terms of Explanation III of section 215 of the Criminal Procedure Code, unless Mr. Ghose could show some law to the contrary."

Although the Deputy Magistrate thought at the time that there was no case, he was powerless to drop it, and the trial was prolonged for several days, the accused being compelled

to spend more than Rs. 10,000 in counsel's and pleader's fees, &c.

In the course of the subsequent proceedings Mr. W. kept on openly giving the Deputy Magistrate advice in writing as to the order in which certain witnesses should be examined, &c.; and when the counsel for the accused went to Mr. W. at the suggestion of the Deputy Magistrate himself, to remonstrate and respectfully protest against his interference, Mr. W. claimed the right to advise the Deputy Magistrate on the ground that he was his subordinate! At the conclusion of the case for the prosecution, the Deputy Magistrate went with the record to Mr. W.'s house to consult him, and then discharged the accused, holding that no offence had been disclosed! If the Deputy Magistrate had been left to himself, the case would have terminated much earlier and saved the parties much expense and annoyance.

CASE NO. 6

The Furreedpore Bribery Prosecutions—1874

In 1874 Mr. W., District Magistrate of Furreedpore, acting on some private or anonymous information, issued in his executive capacity a proclamation to the effect that if any person would come forward and admit that he had paid any illegal gratification to one Het Lal Roy, a clerk in the Police Office, the informant would not be liable to any punishment. Mr. W. further directed the Police to collect evidence against the accused, and himself passed orders from time to time as to how the investigation was to be conducted. The result of this unusual proclamation in a district like Furreedpore, was that more than fifty Police chaukidars and others came forward and stated that they had at different times paid small sums to the accused. Mr. W. made over some of these cases to a first class Subordinate Magistrate and some to a second class Magistrate, and himself took an active part in prosecuting them. In some of them the accused was convicted by the Subordinate Magistrates although there was nothing to corro-

borate the statements of the informers on whose evidence the convictions were based. As regards the convictions by the second class Magistrate, the accused was only entitled to appeal to Mr. W. himself, and it would have been perfectly useless for him to have adopted that course. The accused accordingly moved the High Court to transfer his appeals to another district. At the hearing of the rule Mr. W. opposed it on the ground that his prestige as a District Officer would suffer if the appeals were transferred. The High Court, however, made the rule absolute and transferred all the appeals to Backergunge (22 W. R. Cr. Rule 75). The appeals were eventually heard by the Sessions Judge of Backergunge (afterwards Mr. Justice Tottenham), who acquitted Het Lal Roy in all the cases.

CASE NO. 7

The Case of Ramzan Ali

A case in some respects similar to case No. 6, happened at Midnapore in 1875, in which the High Court was moved for a transfer of the appeals of the prisoner from the Court of Mr. H. the District Magistrate, who was the real prosecutor and who was the appellate authority, the case having been made over by him originally to a second class Magistrate for trial. The appeals were transferred to the Judge. The judgment of the High Court will be found reported in 24 W. R. Cr. Rule 58. The following passage occurs in that judgment:—

"There is no doubt that he has, as Magistrate of the District, acted zealously in the way of procuring the initiation of this very prosecution and many others of a like kind against the prisoner, and has in a manner taken upon himself (at the outset at least) the character of a prosecutor in it. It would, therefore, not be altogether seemly that the appeal from the Deputy Magistrate should be made to him, and as we understand his letter, it would appear that he naturally feels himself that would be so."

CASE NO. 8

The Jungipore Case

In the District of Murshidabad, a European indigo-planter had a dispute with a number of his ryots, who were not very willing to sow indigo. Thereupon, a series of criminal cases were instituted against the ryots by the planter, charging them with the forcible rescue of some of their cattle, which were about to be impounded on account of an alleged trespass on the factory grounds. These cases were tried by a Bengali Deputy Magistrate, who dismissed some of them, and in others convicted and fined the accused ryots, that being the usual sentence in such cases. The indigo-planter, however, was not satisfied with the punishment inflicted, and was supposed to have made some private representations to the Magistrate of the district. Anyhow the District Magistrate, Mr. M., wrote several demi-official letters to the Deputy Magistrate finding fault with the sentences passed by him as being unduly lenient, and laying down certain instructions for his future guidance. Soon after there was a fresh case of the same kind before the same Deputy Magistrate, who on this occasion passed sentence exactly in accordance with the directions of the District Magistrate, quoting certain passages from the demi-official letter of that officer in justification of the unusual severity of the punishment inflicted. The convicted ryots then appealed to the Sessions Judge, who declared that the sentence passed was illegal, and reduced it to its proper limits. The District Magistrate, Mr. M., being informed of what had taken place, and annoyed at finding that his private instructions to the Deputy Magistrate had been disclosed, sent for the latter officer and told him that he had no business to refer to the demi-official letter. In the course of this conversation Mr. M., went so far as to characterise the conduct of the Deputy Magistrate as pure "*budzati*" (rascality).

This case caused a good deal of sensation by reason of the treatment which the Deputy Magistrate had received from

Mr. M., and subsequently from the higher authorities but it furnishes an illustration of the manner in which the independence and discretion of Subordinate magistrates are constantly interfered with by District Officers.

CASE NO. 9

The Bhagulpore Case—1883

In the year 1883 a very strange case occurred at Bhagulpore, in which a well-known and wealthy zemindar named Surdhari Lal, had to apply to the High Court for redress. A dispute existed for some time between him and certain Mahomedans, regarding a piece of land which had led to the institution of several cases between his men and the Mahomedans. Mr. S., the Magistrate of the District, in a private letter to the zemindar, had asked for a large sum of money (Rs. 20,000) for a public object, which request had not been complied with. He had also proposed in certain letters that the zemindar should sell his property to the Mahomedans for a small amount; but the zemindar had not agreed to these terms. Mr. S. then wrote to the zemindar threatening to take action against him under section 144, Criminal Procedure Code which authorises a magistrate by an executive order to "direct any person to abstain from a certain act, or to take certain order with certain property in his possession." Shortly before this a criminal charge had been preferred against the zemindar by the Mahomedans, and the Joint Magistrate of Bhagulpore had dismissed the complaint on the ground that he had made a full enquiry into the same facts in another case, and although the zemindar was not formerly a party to that proceeding, yet the facts disclosed in it clearly showed that neither he nor his men had done anything wrong. Mr. S. finding that the zemindar was reluctant to sell the property, revived, after the lapse of a month and-a-half, the prosecution in that case, made it over to a Subordinate Deputy Magistrate, and directed the personal attendance of the zemindar who lived in Calcutta. About this time

certain overtures were made by Mr. S., to the effect, that if the zemindar would sell the property, the prosecution would be withdrawn. But the zemindar, instead of yielding, moved the High Court annexing to his affidavit the letters he had received from Mr. S. A rule was granted by the High Court, calling upon the Magistrate to show cause why his proceedings should not be quashed, and it being apparent that a discussion of the case in the High Court would lead to a great public scandal, the Legal Remembrancer consented to the order of Mr. S., reviving the prosecution being quashed without any argument; and accordingly it was set aside by consent.

CASE NO. 10

The Maldah Embankment Case—1876

As an illustration of the manner in which a strong executive officer vested with judicial powers sometimes acts in the Mofussil, the facts of the Maldah case, which occurred in 1876, may be given in the words of Mr. Justice Louis Jackson, one of the Judges who decided it in the High Court. The District Magistrate of Maldah, Mr. M., had summarily convicted two respectable inhabitants of the place and sentenced them to two months' rigorous imprisonment each, in consequence of some private information he had received from the Police, without allowing the accused any time to defend themselves. Mr. Justice Jackson in his judgment, dated 6th June 1876, in the case of *Pran Nath Shaha* and *Rama Nath Bannerji*, said:—"From the letter, which the Magistrate himself has addressed to the Registrar of this Court, and from the register (kept in summary cases), it appears that the Magistrate of the district having learnt, shortly after his arrival at the station of Maldah, *in a private conversation with the Assistant Magistrate and the Superintendent of Police*, that some persons were committing acts which, in their opinion, endangered the safety of a large public embankment, directed some enquiry to be made, and followed up that order by

himself walking out the next morning in that direction. In the course of his walk he came upon the petitioner, who was at the time engaged in superintending some work, not on his own account, nor in the capacity of a servant or paid agent, but simply to oblige the owner, the Maharajah of Burdwan; and it appears from the terms of the conviction that, in the opinion of the Magistrate, the defendant had been "proved conclusively to have cut away a part of the slope above the tope* for the purpose of erecting a house and extending a mangoe garden now belonging to the Maharajah of Burdwan, for whom he appears to be acting." * * * * * * "It is impossible to conceive that if a person engaged in laying out his garden and making the foundation for a house should, in so doing, encroach slightly on the inner slope of a large embankment, he can be supposed to be doing so with the intention of causing, or with the knowledge that he is likely to cause, wrongful loss or damage to anybody, especially when it is considered that the loss, if any, caused by the act would inevitably fall most severely on the person doing the act himself, because if the irruption which the Magistrate anticipates should occur in that place, it is the very garden and house in question which would be first exposed to the fury of the waters. This alone is, it appears to us, enough to vitiate the conviction, and if there were nothing more to be said in this case, we should have felt it our duty to annul the conviction and set aside the sentence of the Magistrate; but we think there is more to be said. In this case the complainant or the prosecutor set down is the Government. It does not appear that any information was laid by any person before the Magistrate against this particular petitioner, and the form of the register specifically states that the case was commenced without complaint, and therefore it is to the spontaneous action of the Magistrate himself that these proceedings are to be ascribed. Now, considering that the Magistrate himself was the prosecutor and

* *Tope*, a clump or grove of trees.

himself dealt penally with the case, and considering the important nature of the case in the Magistrate's own view, it appears to us that this was not a case in which he ought to have acted under the summary procedure. *It certainly conveys an alarming picture of the insecurity of liberty in these districts, if a person of respectable position, engaged in a perfectly lawful occupation, which happens unfortunately to have an unsuspected tendency to promote danger to the public, should be surprised by the Magistrate in his walk, taken into custody, and before he has time to turn round, sentenced to rigorous imprisonment for two months.* I cannot think that the Legislature intended to authorise summary procedure in such a case as this. These observations apply in precisely the same degree to the case of another petitioner also before us, *viz.*, Pran Nath Shaha. But in his case there is a still further circumstance. He was also dealt with in the same manner, *was surprised in the course of the Magistrate's walk, brought before the Magistrate, and sentenced to two months' rigorous imprisonment;* but three days after the conviction had taken place he appears to have been served with a notice now before us, dated the 24th April, in which he was called upon forthwith to repair the damage which he had done to the public road by taking earth from its sides. Now, considering the proceedings taken, and the extremely severe sentence passed, there appears something like irony in this notice. We can quite understand that if the Magistrate is informed that a certain practice is dangerous to public security, he should enquire into the matter, give notice to all parties concerned to abstain from such practice, and warn them that any infraction of the notice should be severely dealt with; but it appears to us that to come suddenly upon these persons, take them into custody, and sentence them to rigorous imprisonment is, to say the least, the exercise of a misplaced rigour. We reverse the convictions in both these cases, and set aside the sentences." The passages printed in italics were not underlined by the Judges in the original judgment.

CASE NO. 11

The Lokenathpur Case—1877

The facts of this mysterious case, which happened in 1877-78, are as follows:—On the 10th June, 1877, Mr. G., Manager of the Lokenathpur Factory, wrote the following letter to Mr. S., the Magistrate of the Chooadanga Sub-division in Nuddea:—

"My dear S—,

"Ramgati Biswas, the Tahsildar of Kooltolla, has been found over Rs. 400 short of his collections, and I have a case ready to bring against him in your Court to-morrow. This morning at daylight his horse was found near the Boonapara line, and a saddle, a bridle, and some clothes, I suppose belonging to him, under a tree, near the place; so something is up I have given information to the Police at Damoorhooda.

Yours sincerely,
G. A. G.———"

A few hours afterwards Mr. G. wrote another letter informing the same Magistrate that the Police had found the body of Ramgati Biswas in a tank near the factory. The body was examined by a doctor, who declared that in his opinion the man had been killed before his body was thrown into the tank, while two men alleged that they had seen deceased at the factory the preceding evening; one of them stated that he had accompanied the deceased to the factory, that the latter, carried with him some ornaments in order to satisfy his debts to Mr. G., that Mr. G. refused to allow the deceased to leave the factory until he had paid the full amount of his debt, and that the witness returned home leaving the deceased in charge of the factory servants. The other witness stated that he had witnessed an altercation between Mr. G. and the deceased. Acting upon these statements and other evidence which seemed corroborative, Mr. S., the Magistrate, arrested the entire factory staff, with the exception of Mr. G. and his head native servant, who were, however, regarded in the light of accused persons.

The Investigation into the circumstances attending the supposed murder was begun by the Police under the personal

supervision of Mr. S., and in the course of this investigation certain statements, in the nature of confessions, were made by some of the prisoners. This inquiry was afterwards conducted by Mr. S. personally for several days, in the course of which he examined many witnesses, the evidence of some of whom clearly indicated that Ramgati Biswas' death must have been due to certain injuries which he had, in all probability, received at the Lokenathpur factory. About this time certain communications passed between Mr. S. and the District Magistrate and the Commissioner of the Division, the precise nature of which is not known; and in the end Mr. S. discharged all the accused. The result of this elaborate enquiry was embodied not in a judgment, but in what Mr. S. called "an official report," and that result was to the effect that in his opinion Ramgati Biswas had deliberately and "maliciously" committed suicide by drowning himself, so that a false charge of murder might be brought against Mr. G. and his servants, although the medical evidence was to the effect that no water was found in the stomach of the deceased! Mr. S. further went on to suggest in this report that the two witnesses referred to above should be prosecuted for having given false evidence before him. These two persons were then prosecuted under orders of the District Magistrate, before Mr. T., Joint-Magistrate of Krishnagar, who convicted them of having given false information, although the depositions were not produced before him, and although it was not clear what was the precise character of the proceeding in which they had deposed, and sentenced them to three months' rigorous imprisonment. The conviction was also wholly unsustainable on the evidence. These two persons then appealed to the Sessions Judge of Nuddea, and on their appeal coming on for hearing, all public discussion of the case by their Counsel was avoided by the Government Pleader, who at the outset informed the Court, under instructions from the District Magistrate, that the conviction could not be supported, in asmuch as the record of Mr. S.'s enquiry could

not be produced, and that it contained the depositions of witnesses as well as Mr. S.'s sanction for the prosecution which had not been put in at the trial. On the acquittal of these two persons their Counsel moved the Judge to call for the record of the enquiry by Mr. S., and to set aside his order discharging the prisoners originally arrested on a charge of culpable homicide. The Sessions Judge was of opinion that the enquiry which Mr. S. had held, and which had terminated in the discharge of the prisoner, was by law a judicial proceeding, and as he thought that there were *primâ facie* grounds for supposing that there had been a failure of justice, he called for the record of the enquiry under the provisions of the Code of Criminal Procedure. The District Magistrate (Mr. S—s), however, being of opinion that the enquiry by his subordinate Mr. S. was non-judicial, declined to comply with the Judge's order calling for the report, on the ground that public interest would suffer by its production. The Judge was thereupon compelled to make a reference to the High Court on the subject, and that Court called for the proceedings of Mr. S. In the meantime, having regard to the public agitation on the subject, the Government of Bengal was induced to publish this extraordinary record omitting certain portions of Mr. S.'s report. Its publication, however, did not in the slightest degree allay the public excitement regarding the case, and the entire press condemned the proceedings of Mr. S. as having led to a scandalous failure of justice. An application was then made to the High Court to quash the finding of Mr. S., but that Court held that, although Mr. S.'s enquiry was, under the law, judicial, he was not bound to come to any finding when making an inquest, and that consequently his report was not a judicial document. (See I. L. R., 3 Cal. 742),

The details of this case and its several episodes were severely commented upon by the press for many months in 1878, and were such as to throw great discredit upon the administration of criminal justice in this country. In the

report submitted by Mr. S. embodying the result of his inquiry, he actually stated that he had detained some of the factory servants "only to keep up appearances,*" and he also admitted having committed, in the course of the enquiry, certain acts which were wholly illegal and unjustifiable.

* Paragraph 65 of the Report.

CASE NO. 12

The Monghyr Case—1879

The facts of this case created much sensation in Bengal in the year 1879. A dispute had existed for some years regarding the possession of a piece of land which a wealthy mohunt † named Lachmi Das claimed as part of his property, while the Majholi Indigo Concern (of which Messrs. Crowdy and Holloway were Managers) claimed as appertaining to their estate. On the 22nd of November, 1878, the mohunt's people sowed the disputed land with wheat and *cheena*. Thereupon a servant of the Majholi Indigo Factory preferred a charge against some of the mohunt's servants and ryots of having, as members of an unlawful assembly, forcibly ploughed and sowed the land. The case was tried by Mr. H., an Assistant Magistrate, exercising second class powers, who discharged all the accused except one Jitoo Lal, whom he convicted of having been a member of an unlawful assembly and sentenced to pay a fine of Rs. 200, or in default of payment to three months' imprisonment. Against this conviction and sentence Jitoo Lal appealed to Mr. M., the District Magistrate, the result of which appeal will be mentioned hereafter. In his judgment convicting Jitoo Lal, the Assistant Magistrate, Mr. H. remarked:—

"Inasmuch as no criminal force was used on this occasion (although there was a show of criminal force, if necessary), I cannot act under section 534, Criminal Procedure Code (Act X of 1872), and restore Mr. Crowdy to possession."

† *Mohunt*—The head or abbot of a monastery.

The section referred to was the only provision of law under which, if criminal force had been actually used, a Magistrate had any right to restore possession, and Mr. H. clearly saw that he had no power whatever under the circumstances of the case to put the factory in possession of the disputed land. Nevertheless, he proceeded to do, in his so-called executive capacity, what was manifestly illegal and what he himself was unable to do in his judicial capacity. He issued a private order to the effect that Mr. Crowdy should be put in possession of the land. This order of Mr. H. being wholly without jurisdiction, was resisted successfully by the mohunt's people, who declined to give up possession of the land. Mr. M., the District Magistrate, on hearing of the resistance on the part of the mohunt's people, himself proceeded to carry out this illegal order of his subordinate. He arrived at the factory on the 23rd January, 1879, and while dining with Mr. Holloway, Manager of the factory, that evening, arranged with him to go on the following morning and take forcible possession of the disputed land, of which the mohunt had admittedly been in possession for two months. Next morning Mr. M. went to the spot accompanied by a number of constables, armed with muskets and bayonets, and Mr. Holloway with some 40 ploughs, to plough down the wheat and *cheena* which had been growing upon the land since the 22nd November. On arrival the Magistrate found the mohunt's people in large numbers on the ground, some of whom were armed with sticks, and though they showed (according to the Sessions Judge, who afterwards tried the case) "extreme desire not to commit themselves and to abstain scrupulously from any illegal act," several of them were arrested by Mr. M. and taken prisoners. Immediately afterwards on the same day, Mr. M., without any complaint and without any evidence, issued a warrant for the arrest of Mohunt Lachmi Das himself, who lived many miles away from the spot, on charges under sections 154 and 155 of the Penal Code, and although offences under those sections are punishable with fine only,

and are bailable, Mr. M. expressly directed in writing that the mohunt should not be released on bail. The mohunt was accordingly arrested on the 25th January, brought in to Monghyr as a prisoner, and kept in the Monghyr Jail for 20 days without having been once brought before a Magistrate, Mr. M. persistently refusing his applications to be released on bail. On the 14th February, Mr. M. himself proceeded to prosecute the mohunt and all his men in the Court of Mr. S., the Joint-Magistrate, who was subordinate to Mr. M., and though the admitted facts of the case diclosed no sort of offence against the mohunt or his men, Mr. S. had not the independence to discharge them, but committed them on various charges to take their trial in the Court of Session, which Court ultimately held that neither the mohunt nor his men had been guilty of any offence whatsoever, and acquitted them all on the 7th April, after they (the mohunt's men) had been in custody for more than two months. It ought to be stated that Mr. M. had in the meantime caused the crops of these men on the disputed land to be destroyed. As regards the action of Mr. H. who tried to cancel, in his executive capacity, his own judicial order, the Sessions Judge (Mr. Lowis) in his judgment, remarked :—

"Mr. H. admits in his evidence that since January 3rd (the date of his judicial order) he has taken no evidence as to possession ; that he has passed no subsequent judicial order on the subject ; and that his directions to the Police to uphold the factory in disturbing the possession of the mohunt's people were executive orders practically cancelling the judicial finding refusing to restore possession to the factory."

Regarding the case itself against the mohunt and his people, the Sessions Judge made the following observations :—

"The night before he (Mr. M.) arranged with Mr. Holloway, the assistant of the factory, to meet him next morning and point out the land. He went to the spot accordingly, when the factory were ready with some 40 ploughs, to plough up the crops which had been growing there, as he himself computed, for two months previously. Having got there, he says, he explained to the people that they must allow the order of the Assistant Magistrate to be carried out. The crowd, originally about 200, increased,

as he says, to over 1,000, and insisted that the land should not be given up. He then says he arrested some 14, persons, when, seeing that the people would not go, and that Mr. Holloway's ploughs had been driven away towards the factory, he proceeded to leave the ground. He then goes on to describe the rescue of the prisoners. From the above it is quite clear that from first to last what the magistrate was trying to do was to restore possession to the factory. This, it is almost needless to point out, he had no right to do. Possession was with the mohunt's people; no judicial enquiry had been made under Chapter XL, and no criminal authority has except under this chapter, any jurisdiction to interfere with actual possession of immoveable property.

"The prosecution may urge, why did not the parties appeal to the authorities? But, in the first place, the party in possession was being assailed, and had been assailed ever since January 7th, by the local criminal authorities acting executively, and it was difficult for them to know where to apply for help; not only so, but their failure to apply for the protection of the authorities, had such protection been available, would only deprive them of the plea of self-defence, and it would be unnecessary to consider that or any other plea in their defence until a case under section 141 has been made out against them by the prosecution. No such case has been made out. The assembly had not for its common object the overawing a public servant in the exercise of the lawful power of such a public servant, nor was the common object the enforcing of a right, the only item of clause 4 which could in any way apply; the crowd, therefore, up to the time the prisoners were rescued, were not an unlawful assembly."

The above narrative of facts is based, as indeed the judgment of the Sessions Judge itself was based, upon the deposition of Mr. M, himself given in the Sessions Court. As regards his refusal to release the mohunt, Mr. M. said in his deposition :—

"I directed that no bail should be taken. I knew that the offences under sections 154 and 155 were bailable. From the date of his apprehension, January 25th, up to 13th February, he was not, so far as I know, brought up before any Magistrate, but his Mukhtear came to me and applied for bail, which was refused on the ground that there would be another riot."

According to the finding of the Sessions Judge himself it was clear that if any person was guilty of rioting it was Mr. M. himself, but he probably thought he was justified in acting in his executive capacity in the way he did!

Jitoo Lal's Appeal

On the 30th of January 1879, a few days after Mr. M. had accompanied Mr. Holloway, and attempted to put him by force in possession of the land, Mr. M., while out on tour 30 miles away from Monghyr, and without giving any notice to the appellant of either the time or place of hearing, took up the appeal of Jitoo Lal, and not only dismissed it but enhanced the sentence originally passed by Mr. H., from a fine of Rs. 200 to six month's rigorous imprisonment! Jitoo Lal thereupon moved the High Court, and that Court on the 9th May 1879, quashed Mr. M.'s order, on the ground that the appeal had never been heard. The High Court proposed that the appeal should be sent down to the then Magistrate of Monghyr, as Mr. M. had in the meantime taken furlough, but Jitoo Lal's Counsel stated that, although the original conviction by Mr. H. was in his opinion unsustainable on the merits, yet his instructions were not to press for the hearing of the appeal, unless the High Court itself were inclined to hear it, and he accordingly pressed that the appeal might be transferred to the High Court. The learned Judges not having agreed to hear the appeal themselves, it was withdrawn simply because the appellant had no confidence in the Court of the District Magistrate! The High Court concluded its judgment in these terms:—

'We were prepared to send the appeal back to be heard by the present Magistrate of Monghyr, but Mr. Ghose (Counsel for the appellant) says he does not wish that course to be taken. The original conviction will therefore stand. We are bound to add that we have seen in this case indications of much irregularity and serious indiscretion on the part of the Magistrate. Having made this remark, we do not think it necessary now to say anything further."

In commenting upon this case, the *Englishman* (16th May, 1879), remarked:—

"We feel bound to add, in the interests of public justice on which more than anything else the permanence of our Government in India depends, that the Judges of the High Court have shirked their duty, and under the veil of a half-hearted and indeed most gentle censure, have attempted to

screen one of the grossest perversions of the criminal law that has ever come to our notice."

This "gross perversion of the law" would scarcely have been possible if Magistrates in India did not combine executive with judicial functions. It should be stated that an attempt was actually made by the local authorities to prefer an appeal through the Local Government against the judgment of the Sessions Judge acquitting the mohunt and his men, but the Legal Remembrancer declined to advise any such course in a letter which he addressed to the Commissioner of Bhagulpur, which was published in the *Statesman* of the 27th June, 1879, and which letter ended thus:—

"I do not attribute much blame to Mr. H.; his only fault appears to me to have been in striving to get rid of his own decision, and this sinks into insignificance when contrasted with some other orders that have been passed and carried out in the course of the proceedings.

"It is not my province to distribute praise or blame among any of the officers concerned, but I feel it my duty to point out to you that any attempt to make public these proceedings by appeal or otherwise must result in bringing discredit, not only on the officers concerned, but probably on the service to which they belong. The record is herewith returned."

Commenting upon the withdrawal of the appeal of Jitoo Lal, the *Statesman* in a leading article (20th May 1879) made the following remarks:—

"Jitoo Lal is unfortunately a representative man. There is throughout the Mofussil a deep feeling of dissatisfaction with our administration of justice, and this ought to be known and acknowledged, for it is fatal to true loyalty. There can be no advantage in blinking unpleasant facts, in trying to delude ourselves with the belief that the people have confidence in our administration of justice, and in making our countrymen at home believe that this is one of the great boons we have bestowed upon the people, for which they are truly thankful. The truth is not so. The people have the greatest confidence in our High Courts, and generally also, we think, in our Sessions Judges, but not in the justice administered by our Mofussil Magistrates."

CASE NO. 13

The Krishnagar Students' Case—1884

This case illustrates in a very striking manner the evils resulting from the existing combination of judicial and executive functions, and shows likewise how the system may be made to work in the interior of Bengal. The facts of the case stated briefly are as follows:—At a *Barwari jatra* (a theatrical performance given by public subscription) held at Krishnagar on July 15th, 1884, a large crowd had assembled and a number of students were seated on benches constructed of bamboos. The managers of the *jatra* in order to make room for more visitors, suddenly cut down some of the benches on which the boys were seated; some of the boys, in consequence, fell down and the remainder began clapping their hands. The clapping continued for several minutes and the result was that the performance could not take place, and the audience were dismissed, the band playing the National Anthem. The District Superintendent of Police, Major R., who had some hand in organising the *jatra*, was very much annoyed at the performance not having taken place, and he directed his subordinate police to arrest the boys who by their clapping, were instrumental in breaking up the *jatra*. He also caused one of the shopkeepers to become the formal complainant in the case, and a prosecution was accordingly instituted against several of the boys, who had been arrested in their lodgings, on a variety of charges. Major R. got the Magistrate of the District, Mr. T., to make over the case to an Assistant Magistrate Mr. P. H. O. of the Bengal Civil Service, and prevented the case from being taken up in the ordinary course by any of the Bengali Magistrates in the town of Krishnagar. Twenty-five students were accordingly charged before the Assistant Magistrate on the 25th July; fifteen witnesses for the prosecution were examined in chief, the cross-examination being reserved. All that these witnesses proved was that these boys were among those who had, by clapping their hands, prevented the *jatra* from taking

place. On the 26th July, the trial having been resumed, the students were defended by Counsel from Calcutta, and the following extract from the report of the proceedings, published in the *Statesman* newspaper, will show what passed between the Magistrate and the Counsel on that occasion:—

The case was resumed on Saturday, 26th July, when Mr. M. Ghose, Counsel for the accused, who was not present the day before, asked the Court's permission to make a statement. He said that never before, had any court been engaged in the trial of a more trumpery case. It was inconceivable how anybody could have thought that what the accused had done, amounted to an offence either under the Penal Code, or any other law prevailing in the Mofussil. He was ready to give the prosecution a chance of retiring from the case, and recommended them to drop it; but if in spite of this opportunity, those who were responsible for this prosecution, desired to proceed he would be glad to have the whole affairs thoroughly sifted. At the same time, Mr. Ghose warned the other side that this course would lead to a great many unpleasant revelations. The learned Counsel thought it most undesirable that the time of the Court should be further taken up with the investigation of this frivolous matter, for clearly the Krishnagar magistracy and police had little serious work to engage them, if they could spare time to investigate such a paltry matter.

The Magistrate—I admit that, so far, the evidence has disclosed no offence, But the prosecution have not finished their case. They have two morewitnesses—one to prove mischief, and the other insult, and their evidence, they say, is of a rather serious nature. They do not say that all the boys were concerned in it. Most probably 10 or 12 of them who have not been identified will be discharged; but against one of them there is a very disgusting insult alleged. We must finish the case of the prosecution first. At present I consider there might be a case. The boys, as far as I can make out, did make some noise; but you can of course put another light upon that circumstance by your cross-examination.

Mr. Ghose—But what constitutes the mischief with which they are charged? It must be shown that the boys intended to damage some tangible property, whereby loss accrued to certain people.

The Magistrate—For instance, there was pecuniary loss to the members of the *Barwari*.

Mr. Ghose—Pecuniary loss in this case would not constitute mischief, as it would not in any way come within the definition of "mischief."* It

* The definition of mischief according to the Penal Code is to be found in S 425 which enacts:—

Mischief.—Whoever, with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or

must be proved that it was the intention of the boys to damage or change property, in consequence of which there was pecuniary loss to its owners.

The Magistrate—I think the *Barwari Jatra* is a kind of property, if those getting it up expect profit from it.

Mr. Ghose—It can be no property whatever; the performance is got up by public subscription.

The Magistrate—The prosecution say that it belonged to Deepun Roy, who got up the performance, as far as I can make out, in the hope of making a profit.

Mr. Ghose—Assuming that to be so, the offence which the boys intended to commit by clapping their hands, could not be considered as mischief. Take, for example, the Tichborne demonstrations in Hyde-park. Could those people who disturbed or interfered with them be charged with having committed mischief? The utmost that could be alleged against the accused is that they had put a stop to a public performance. The doing so might under certain circumstances have been an offence, if the Calcutta Police Act applied.

The Magistrate—Would not the causing of wrongful loss be an offence? If the boys caused wrongful loss, they ought to be punished.

Mr. Ghose—Certainly not. Causing wrongful loss is not an offence under the Penal Code, except under certain circumstances. Wrongful loss may be in some cases ground for a civil action.

The Magistrate—The police allege loss, and therefore I must hear all the evidence they offer. They say they have two more witnesses—one to prove pecuniary loss, and the other the unlawful object of the assembly.

Mr. Ghose then said that if the prosecution were determined to go on, he was quite prepared that there should be a thorough sifting of the matter.

Two more witnesses whom the Police wished to call being absent, the Counsel for the defence urged that the case should not be further postponed unless the remaining witnesses could speak to any particular offence against any one of the accused. The Magistrate decided that he would give the Police an opportunity to produce all their witnesses, and that in the meantime Mr. Ghose might go on with the cross-examination of the witnesses already called. Accord-

utility or affects it injuriously, commits "mischief."

Explanation 1.—It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or damage to any person by injuring any property, whether it belongs to that person or not.

Explanation 2.—Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person and other jointly

ingly the witnesses were cross-examined and the case was postponed to the 2nd August, on which date one of the absent witnesses was examined and cross-examined.

At this stage Mr. Ghose asked the Magistrate whether he thought that there was any use in going on with the case, having regard to the opinion which the Magistrate had expressed on the previous occasion.

The Magistrate—It seems to me that the accused ought to be charged with being members of an unlawful assembly under clause 5 of Section 141 of the Code. The simple question is, whether these boys used force or not ?

Mr. Ghose—Upon that point there is no evidence whatever. On the contrary we have evidence that the *jatra* people broke up the performance of their own accord. The complainant began by saying "We will break up the performance if you go on like that." There was no compulsion of any sort used.

The Magistrate—I think there was considerable compulsion.

Mr. Ghose—How can that be when they themselves put a stop to the performance, by thinking no doubt that it would be more discreet to do so ?

The Magistrate—The section explaining criminal force says (read S. 350 P. C.)* If the clapping drove the people away, then I consider the accused were guilty of criminal intimidation.

Mr. Ghose—But where is the criminal force ? There is no evidence that any person was touched. There was no attempt on the part of any of the witnesses to suggest anything of the kind. On the contrary, the Inspector that morning had no reason to think that any offence had been committed.

At this stage, Major R. came in, took his seat on the bench by the side of the Magistrate, and began speaking to him in an inaudible tone.

The Magistrate—The Police went to ask the witness this question "Why did you go and bathe ?"

Mr. Ghose—I object to the question. What he heard and why he bathed would be no evidence.

Mr. Ghose—I object to a double prosecutor. Is Major R. going to prosecute ?

Major R.—If you like I will stand as prosecutor. Nobin Dey has been put forward as the formal complainant according to usual practice, but I certainly initiated the proceedings in consequence of what I am about to say. A *jatra* was held with *my* permission and under *my* authority, and it was therefore legally held. That *jatra* was interrupted, and I wish to know who did so ? (in a loud tone).

* S. 350 Penal Code enacts:—*Criminal force.*—Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other.

Mr. Ghose—That may be a very natural curiosity on your part, which you might gratify by making a private inquiry. But at present we are in the midst of a criminal trial, Major R.

The Magistrate (to Major R.)—Even if this evidence were put forward, it would come to nothing. Even if what these two men said to him were admitted in evidence, it would have no effect. It would prove nothing.

Major R.—The witness means to say that he was not aware of the fact himself, but that others told him that a certain thing had occurred, in consequence of which he went home to bathe.

The Magistrate—Mere hearsay would prove nothing except that he had a reason for going to bathe.

Major R.—What communication did they make to him? *My* witnesses have been asked what I said to them, and why cannot I ask them what they heard from others?

The Magistrate—That was asked for a different purpose under cross-examination. That is not admissible under the Evidence Act. He received a communication—that is all we can hear, in consequence of which he did what he otherwise would not have done. We cannot go farther than that. If you find out these two men, you may ask them what it was they told the witness.

Major R.—In that case I shall ask the Court to give me a postponement.

Mr. Ghose—If these two men are not myths, the police ought to have found out long ago who they are. I shall object very strongly to a postponement on that ground. If such a statement was really made to him, he evidently attached very little importance to it at the time.

The Magistrate—Their case is that it was communicated to the Sub-Inspector that evening.

Mr. Ghose—Then why did not he make inquiries as to who the men were? The witness was serving on the jury that week, and the police had a whole week to prepare and send up their case. But they did not do so, and now ask for a postponement.

Major R.—There was a very good reason why the Sub-Inspector could not take down the witness' statement at the time. Ashutosh was serving on a jury, and we could not withdraw him from a Court of Justice.

The Magistrate—The explanation of the police seems to me to be satisfactory so far as it goes. The police say "Our witness is going to say so and so," but when he comes here he makes another statement.

Mr. Ghose—There is nothing to show that he has made a different statement. The police never took down his statement to them.

Major R.—Because we could not get him.

Mr. Ghose—Did the police at any time reduce his statement to writing?

Major R.—We are not bound to do so.

The Magistrate—The police send this man up to make a certain statement, and they had every reason for thinking he would make it.

Mr. Ghose—What reason? Is there anything to show that he had made a different statement to the Sub-Inspector? I have no objection to his going into the box, and examining him again on that point, although that would be a most objectionable proceeding. Assuming that such a communication was made to the witness by these two men, what is there in the evidence to exclude the hypothesis that somebody had seen something or discovered something which he imagined was defilement and reported it to this man? What is there to show that the defilement was caused intentionally, or that the substance was not water. It is well known that at the mere mention of the cause of defilement, a Brahmin will immediately go and bathe himself! And in a large concourse like that at the *jatra* where there were 5,000 people present, if one of their number had seen anything like that, every Brahmin among them would have to go and bathe. Some one in the crowd might have been suddenly taken ill.

The Magistrate—But you will have to prove that.

Mr, Ghose—No: the prosecution must prove the contrary. The mere fact that somebody saw something which he imagined was pollution would not prove that it was intentional. There must be some evidence to show that it was intentional. That is a proposition admitting of no doubt. Is it pretended by the prosecution that the boys had conspired with a common object, and that object was to commit this act of defilement?

The Magistrate—The police say that it was done with the common object of breaking up the assembly.

Mr. Ghose—Not one of the witnesses who have been examined on this point has yet said so.

Major R.—That is because you have not permitted that question to be put.

Mr. Ghose—Major R., I am at present addressing the Court.

The Magistrate—Their intention to put a stop to the *jatra* is perfectly clear, and in pursuit of that object, this act of pollution was committed by one of their number, and by the law every one of them must be held to be responsible. I am rather inclined to think that it might come under the head of criminal force. There is no doubt that the boys did something that was wrong. At the same time, the question is whether what they did was unlawful or not.

Mr. Ghose—Leaving aside the legal aspect of the case, suppose a number of English boys had been seated in a theatre, and the managers ousted them from their seats, I think you will agree with me that they would be unworthy of being English boys if they tamely submitted to being so treated. If anything like this had occurred in England, no Police Magistrate would have thought of entertaining the charge.

The Magistrate—As a matter of fact, I remember a similar case in England, in which several undergraduates were taken before the Vice-Chancellor and fined.

Mr. Ghose—That was merely university discipline. Here the case is different. On the two previous days, there was no disturbance whatever; and even on the day in question the performance was going peaceably until the benches were cut down. It was then that they commenced to clap.

Major R.—Mr. Ghose means to say that no boy is amenable to the criminal law—that is, young men and boys may do anything with impunity!

Mr. Ghose— Pardon me, that is not so, and I would not lay down any such untenable proposition of law. The point is whether there is any criminal offence disclosed.

The Magistrate—Well, what is "force"?

Mr. Ghose—Can it be said that because there was a hissing and clapping, there was criminal force?

The Magistrate—There can be no doubt that the intention of the boys by hissing and making a noise was to break up the *jatra*.

Mr. Ghose—No, their intention was to express their disapprobation at the conduct of the *barwari* people.

The Magistrate—On the contrary, the complainant says "I said I wil break up the *jatra* if you do not stop clapping."

Mr. Ghose—But where is the evidence that they intended to use force, or made a show of force?

The Magistrate—The question is, what was the effect of the clapping on the minds of the people?

Mr. Ghose—That it was a good joke—just as, when in a London theatre a play is not approved on the first night of its production, people in the gallery hiss, but the audience never take that demonstration as being hostile to themselves.

The Magistrate—It is one thing to express disapprobation and another for the pit to have a free fight. In this case there might have been a fight, only one party thought it wise to leave. Was not this clapping likely to have produced a fight if the people had chosen to stay? We are not bound to consider the lucky circumstance that these boys had a quiet set of people to deal with, who gave way to them. Suppose they had tried to interfere with a Mussulman procession? That I fancy would have been a serious business.

Mr. Ghose—If their intention was to cause a row, then it would have been a different thing, and in the case of a Mussulman procession they would have been charged with outraging the religious feelings of the processionists. In the whole course of my experience, I have seen nothing like this hunting about on the part of the police for sections

under which to charge the accused, and this they have been doing for a whole fortnight.

The Magistrate—Of course the charge of mischief cannot stand after Deepun Roy's evidence, but we are now considering whether the conduct of the accused did not amount to criminal intimidation. It is the usual thing that has happened in the preparation of this case—what is everybody's business, is nobody's business, and no one seems to have taken much trouble about it.

Mr. Ghose—Don't you think that before a case is instituted, those who are responsible should first be certain of their ground? Can they be allowed in the course of the trial to be perpetually shifting it, and all because Major R.'s feelings are outraged by the fact that a *jatra* which had *his* authority had been put a stop to!

Major R.—I beg to reply to that remark.

Mr. Ghose—Excuse me, Sir, I am addressing the Court now.

Major R.—Mr. Ghose has asserted that I have been hunting about for sections and that sort of thing, in order to bring something against these boys, because they interfered with a *jatra* which had my permission. Now, there was a good deal of influence brought to bear on me not to prosecute, and I went so far as to agree not to do so; but there were some legal difficulties in the way, and the case had eventually to go before the Court. I never anticipated that a matter which Mr. Ghose himself calls trivial should call for the services of so eminent a member of the Calcutta bar as himself and another Calcutta barrister. The probability is, that had there not been so much opposition to the case, there would not have been so much perseverance on our part to ascertain and maintain the authority of the law.

The Magistrate—In the illustrations appended to section 349 there are some remarkable instances of criminal force—as for instance *A*. *E*. and *G*.*

* *(a)*. Z is sitting in a moored boat on a river. A unfastens the moorings, and thus intentionally causes the boat to drift down the stream. Here A intentionally causes motion to Z and he does this by disposing substances in such a manner that the motion is produced without any other act on any person's part. A has therefore intentionally used force to Z; and if he has done so without Z's consent, in order to the committing of any offence, or intending or knowing it to be likely that this use of force will cause injury, fear, or annoyance to Z, A has used criminal force to Z.

(c) A throws a stone, intending or knowing it to be likely that the stone will be thus brought into contact with Z, or with Z's clothes, or with something carried by Z, or that it will strike water, and dash up the water against, Z's clothes, or something carried by Z. Here, if the throwing of the stone produce the effect of causing any substance to come into contact with Z or Z's clothes A has used force to Z; and if he did so without Z's consent, intending hereby to injure, frighten, or annoy Z, he has used criminal force to Z.

(g). Z is bathing. A pours into the bath water which he knows to be boiling. Here A intentionally, by his own bodily power causes such motion in the boiling water as brings

Mr. Ghose—Those illustrations have a certain element which is absent in the present case. Here there was nothing tangible. It was all a matter of the mind; no matter was set in motion—the whole thing was sentimental.

The Magistrate—Then as regards section 351, which says (reads). * It strikes me that clapping is such a sign of war.

Mr. Ghose—If you clap your hands at a dog, I can understand that the intention is a bellicose one, but I hear now, for the first time, that the clapping of hands is a "sign of war." From an English point of view, it would be regarded as a mere expression of approbation,—or disapprobation when the clapping was ironical.

The Magistrate—The point is whether it was likely to have caused a breach of the peace.

Mr. Ghose—Certainly not,—and what is more it did not.

The Magistrate—Yes, because the boys had to deal with a law-abiding people.

Mr. Ghose—Does your Worship imagine that this clapping was not taken up by the crowd? The fact is that when the boys clapped, everybody followed suit.

The Magistrate—But the clapping had the effect of breaking up the *jatra*, and I hardly think that the *barwari* people would voluntarily do anything to hurt themselves. It is not usual for a man to hurt himself intentionally.

Mr. Ghose—But there was no hurt here. No one says that anybody was either hurt or annoyed. The people merely went away disappointed. I had your opinion the other day, that no offence had been disclosed; no evidence has since been given to lead you to change that opinion. What is the case against the boys? In the whole course of my experience. I have never come across a more absurd case. If Major R. is responsible for the prosecution, I should like to examine him. He has himself told us that he is the prosecutor.

The Magistrate—It strikes me that there was a show of criminal force within the meaning of the Act.

Mr. Ghose—It will shorten matters if the Court will allow me to examine Major R.

that water into contact with Z, or with other water so situated that such contact must affect Z's sense of feeling. A has therefore intentionally used force to Z; and if he has done this without Z's consent intending or knowing it to be likely that he may thereby cause injury, fear, or annoyance to Z, A has used criminal force.

* *Assault.*—Whoever makes any gesture or any preparation, intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.

The Magistrate—Whatever Major R. may say will have no effect on what other people may have to say. You will have to show first that there was no force or annoyance.

Mr. Ghose—There is no evidence on record that there was any force or annoyance. There was only disappointment.

The Magistrate—My record and the report in the *Statesman*, both have the word "annoyance" frequently in your cross-examination.

Mr. Ghose—I have been singularly unfortunate if I have made out a case against myself, when the prosecution had failed to do so. I feel confident that my cross-examination did not disclose a case against the accused after the examination-in-chief had not done so. The word "annoyance" does not seem to occur in the report in the *Statesman*. (A copy of the *Statesman* was here handed up to the Court).

The Magistrate—Of course at that time I knew nothing about the case and could not therefore put the witnesses all the questions I should have done, so that the examination-in-chief was rather weak.

Mr. Ghose—About this feeling of disappointment, a man might be disappointed at a performance being put off, but he could not make a legal grievance of that.

The Magistrate—It strikes me that when people are disappointed they are generally annoyed. We may presume that when people have gone to hear a performance which is interrupted, they have gone away unhappy.

Mr. Ghose—If there had been any force used to produce that result, that force would have been criminal. I do not propose to cross-examine all the witnesses. I am prepared to take the risk, because I consider that no offence has been disclosed. Major R. is practically the prosecutor, and that being so, I am entitled to examine him as to the origin of the prosecution. I wish to show that this prosecution is not a *bonâ fide* one. That is my defence. The prosecution is merely trying to justify Major R.'s illegal proceedings. Assuming that all the witnesses have spoken the truth, still the prosecution would not be *bonâ fide*. Supposing I go to the dâk bungalow and have breakfast there, am I amenable to charge of criminal trespass?

The Magistrate—It would be for the Court to consider whether that was criminal trespass. But that is different. In this case, I hold that the boys did something wrong.

Mr. Ghose—Considering how the boys were treated by the *barwari* people, I simply admire their moderation. If an attempt was made to oust them from the benches, I say that no collection of European boys would have behaved as mildly as they did.

The Magistrate—Then a collection of European boys should have been punished.

Mr. Ghose—But not under these circumstances. no other court would entertain such a charge.

The Magistrate—Any court would be justified in doing so.

Mr. Ghose—Suppose a number of students were at a public meeting, and its organisers told them, "You must go away," but instead of going away they clapped their hands; in doing this would they be guilty of any offence?

The Magistrate—That is a different thing. In this case they were not told to go away, but merely to make room.

Mr. Ghose—The boys were seated; their benches were cut down, and they were told to go away.

The Magistrate—Have you proved that as the boys were seated somebody cut the benches and the boys fell to the ground?

Mr. Ghose—Yes, that is in evidence already.

The Magistrate—The *barwari* people merely say, "We asked them to get up and they objected." You have got to show that the boys had some provocation to justify their conduct. Take your own case of a theatre; the audience do not leave in a fright when there is a clapping of hands,

Mr. Ghose—But it is not shown that these people left in a fright.

The Magistrate—Some sort of apprehension appears to have been shared by the people who were there, as they thought it was much wiser for them to leave.

Mr. Ghose—But their thinking so will not suffice.

The Magistrate—Certain boys clapped their hands, whereupon the audience left. If the audience thought it a good joke, they would have stopped; but they left because they were disappointed or angry. I consider that those who were on the spot were the best judges of their own feelings, and if in consequence of those feelings they left, I am justified in holding that that clapping was criminal intimidation.

Mr. Ghose—It cannot be criminal intimidation.

The Magistrate—I mean a show of criminal force.

Mr. Ghose—Do I understand the Court to mean that clapping is a show of criminal force?

The Magistrate—Yes, under certain circumstances. Supposing the boys went out on the *maidan* and clapped their hands, that would be no offence, but that they did so at the *jatra* and drove the people away is a different thing. The effect of this clapping amounted to a show of criminal force. It is fair to argue from the effect it had on the people present, that the clapping was a show of criminal force.

Mr. Ghose—Certainly not; because Major R. has a pencil in his hand which he is now brandishing would I be justified in concluding that he was going to strike me with it? The effect it may have on my mind is a consideration absolutely irrelevant to the point.

The Magistrate—It will save time, I think, if you go on with your cross-examination.

Major R.—The boys should be charged under section 268 as having committed a public nuisance.

Mr. Ghose—Ought not that to satisfy you, sir, that the prosecution are beating about the bush to get hold of something? They are not sure even now what the offence is.

The Magistrate—It strikes me that the prosecution are treating this as a trivial case.

Mr. Ghose—I don't doubt the whole Penal Code is open to them, but what we want to know is the charge upon which we are going to be tried. I want to cross-examine Major R. first in order to show that this prosecution is not a *bona fide* one.

The Magistrate—He knows nothing about the case.

Mr. Ghose—He has himself told us that he knows a good deal about it, and that Nobin is merely a formal complainant. If the court does not examine Major R. now, it will have to do so later on.

The Magistrate—The regular order is that he should be examined last. You have first to break down the case to a certain extent. You have not yet shown me that the prosecution is not *bona fide*.

Mr. Ghose—Well, then I object to Major R. being here, because he has been summoned, and I have to examine him.

Major R. thereupon left the Court.

The remaining witnesses were then cross-examined by the Counsel for the defence and at the conclusion of the cross-examination the following conversation took place between the Counsel and the Magistrate. It will be seen from the remarks made by the Magistrate trying the case that he was entirely in the hands of his official superior, the District Magistrate, whose opinion he was anxious to obtain in the matter:—

Mr. Ghose—I have cross-examined the witnesses at some length, and even assuming that they have told the truth, I submit there is no case.

The Magistrate—The broad facts remain the same. It seems clear to me that the conduct of the boys amounts to a show of criminal force. On some of the minor points the witnesses have contradicted themselves, but the fact remains that the *jatra* was broken up. The only question is whether it does not amount to an offence, but I will make a reference to the Magistrate about it.

Mr. Ghose—Have you any power to do so? Under what section do you propose to make the reference.

The Magistrate—*It is the practice in the Mofussil.*

Mr. Ghose—That may be so, but I will consent to nothing which is not warranted by law.

The Magistrate—I am satisfied that what the accused did amounts to criminal force.

Mr. Ghose—But where was the show of force? There are many nice questions of law involved in the case. Even if it were a criminal offence to break up the *jatra*, there would be a great many other difficulties to get over. It would have to be proved that the assembly was an unlawful one, and that the accused had met with a common object. The decisions upon that point are very fine, and the High Court has laid down that even when a party go to dispossess a man of property and one of their number suddenly fires a gun, under section 149, Penal Code, it cannot be said that all the assembly are guilty of the act.

The Magistrate—The evidence goes to show that all the boys clapped, and that they accompanied this clapping with cries, which may be taken to mean that they intended to stop the *jatra*. There are two more witnesses whom the police want to find out.

Mr. Ghose—In this way the police might go on prolonging the case indefinitely on the chance of something turning up. What is to prevent them getting any two men to swear to what probably never took place? On the last occasion the police distinctly said that they had no more witnesses to call except Ashutosh Mookerjee, and the Court said the same.

The Magistrate—The police then did not know of these two men.

Mr. Ghose—Then I understand the case has taken another aspect? First the object of the assembly was to commit mischief; then, it was insult, and thirdly, that it was criminal force; and a fourth aspect was suggested to-day by Major R., *viz.*, that it was a "nuisance." I do not know that you have any power to make a reference to the Magistrate.

The Magistrate—I can make it privately. I can ask for instructions on a point of law.

Mr. Ghose—Nothing can be done privately in a criminal trial. Good deal of that is done in the Mofussil, but I shall be no party to such a reference.

The Magistrate—I won't make the reference as you object and relying upon my own opinion, I hold that the facts amount to criminal force. I do not see why you are talking in this way when I am doing my best to help you.

Mr. Ghose—I am naturally much surprised to hear you say now that you consider the accused committed an offence, after giving your opinion the other day that the evidence had disclosed no offence. However, if you have the power to do so, I have no objection to your making a reference to the Magistrate.

The Magistrate—The case is now going on under the 5th clause of section 141 of the Penal Code.

Mr. Ghose—But not against those who were never identified.

At this stage 11 of the accused were acquitted by the Magistrate under section 245 of the Criminal Procedure Code.

Mr. Ghose—Will you frame a charge under section 141 ?

The Magistrate—I do not know if it is necessary ; it should be sufficient that I have told you under what section the accused are charged. I thought from the first that that section applied, and although I changed my mind, I had not taken it into consideration in connection with the action of the people whose minds were affected by the clapping.

Mr. Ghose—Your assurance ought to be enough ; but if you think there is any chance of the section being changed, it is right that I should know now.

The Magistrate—As far as I can see, you cannot be tried under any other section.

Mr. Ghose—In my humble opinion the case does not come under the Penal Code at all. But you have a perfect right to make a reference, if you think you have the power. The only reference the Code allows is one to the High Court. Will you ask the Magistrate to refer the matter to the High Court? I shall gladly submit to such a reference.

The Magistrate—Only the Magistrate of the District may do that. Personally, I have no doubt whatever upon the point, but as you seemed to think the case could not come under the Code, I thought it would be better to have two opinions.

Mr. Ghose—With every respect for your opinion, this is not a case which can come under the 5th clause of section 141 at all.

The Magistrate—I think it does.

Mr. Ghose—Then we must go on with the case. Have the prosecution closed their case or not ? I want to know this before I begin my case. If not, will they undertake to close their case at the next hearing ?

The Magistrate—I think I may say yes, subject to those two men turning up.

Mr. Ghose—But those two witnesses have no possible bearing on the case under the 5th clause. Their evidence won't be relevant on that charge.

The Magistrate—I had forgotten all about them. It will be hard for me to say if the prosecution have closed their case or not, because I do not know.

Mr. Ghose—Then till they have, I ought not to be called upon to make my defence. There ought to be some evidence that these two men will be forthcoming. Who are they? Their names are not even known. They may be entirely mythical.

The Magistrate (after consulting the police)—Besides these two there

will be no other witnesses for the prosecution. The prosecution have closed their case subject only to those witnesses turning up.

Mr. Ghose—Then my defence will be simply "Not Guilty." I did intend at one time to advise my clients to make full statements, but after what has transpired in Court to-day, I have changed my mind. Our defence is simply "Not Guilty."

The case was then adjourned to the 15th August on which date Major R. himself was cross-examined by Mr. Ghose with the leave of the Court. His evidence throws such light upon the working of the present system that it is desirable to give copious extracts therefrom. The more important passages are printed in italics :—

I consider myself the *de facto* prosecutor in this case. I received certain information regarding the *jatra* on the 13th July last, from a batch of boys. It was not in consequence of that that I went to the *barwari* ; a large posse of policemen came to me after the boys had left, and in consequence of what they told me, I at once began proceedings. On going to the spot I did not direct the Sub-Inspector to get a complainant, and to institute a case against the boys.

Q.—Is it true that you told the Sub-Inspector, "Institute a case, take the *ijahar* (statement) of a complainant, and investigate ?"

A.—I have no recollection of having given him directions in these terms, but what I did say was to get a complainant in the usual way. *As a matter of fact, there was no complainant on record at the time.*

Q.—Did you tell him to get somebody to become a complainant, and then to investigate the case ?

A.—No, not in the way you put it. I merely told him to enquire. I gave him no detailed instructions. I did not say it in so many words. I fear that in the last month, so many things have happened that my memory will not serve me sufficiently well to give you the exact words I used to the Sub-Inspector. The purport of my instructions was that he should investigate the case, and send up everybody that was found to have been concerned in breaking up the *jatra*. I gave that order on the 13th July at about 9 o'clock in the morning.

Q.—Did you then consider what particular offence the boys had committed ?

A.—Yes, that they had been guilty of being members of an unlawful assembly. I considered that the object of that assembly was to break up that *jatra*. That was all that struck me at the time: the fact that a *jatra* had been broken up, which had no business to be broken up, was enough for me. To the best of my belief, I did authorize the holding of the *jatra*. Most certainly I was annoyed on learning that a *jatra* which had my official

sanction had been broken up. Before I gave the Sub-Inspector the order to arrest the boys, I did consider under what clause of section 114 the offence would come. I do not go about with the Penal Code in my pocket. I knew well enough that there had been a breach of the peace and my object was to get hold of the offenders, and prove to them that they had done wrong. By "breach of the peace," I mean that the *jatra* was broken up by the boys.

Q—You felt that the prestige of your office had been outraged?

A.—Bless you, no. I have no prestige to maintain other than the dignity and supremacy of the law. I am a very humble man with no exaggerated notion of my personal importance in the district. Having given orders to the Sub-Inspector to arrest the boys, I went to the hostel at about 1-30 P. M. that day. Mr. Mann (Principal of the College) was there then. I personally ordered the removal of 8 of the boys who were identified in my presence. I gave no orders about the others. I know that they were afterwards taken. I myself ordered the removal of 8 boys and afterwards others were taken. I told the Sub-Inspector, "You have got 12 of them; you may arrest any others should you think it necessary."

Q.—Did you tell the Sub-Inspector that he was to show "no civility, no kindness, no mercy to the boys?"

A.—I did not use those words. I shall admit nothing "to that effect." I merely said that I would stand no nonsense. *I do not positively deny that I made use of those words.* My object was merely to show that there was to be no nonsense; that the case was to go on without any obstruction. I could not swear that I did not use those words. I neither admit nor deny having used them. I did not direct the Sub-Inspector that the boys were not to be released on bail before 24 hours. To the best of my recollection, I said it aloud generally, but not as an order to the Sub-Inspector specially. It is quite possible, however, that I left that impression on the Sub-Inspector's mind. I said something about its being impossible to release the boys before 24 hours, but gave no peremptory order that they were not to be released before 24 hours. I never meant that my remark should be so construed by the Sub-Inspector. I might have said on that occasion, "I mean to enforce the law 16 annas." I gave no orders at a stage when the investigation had barely commenced. I have no recollection that while I was at the hostel, anybody suggested to me that the boys ought to be released on bail. I was out fishing on that 13th July, when Mr. Mann came to me, and requested me to let the boys go on bail. I told Mr. Mann that I had no intention of keeping them for 24 hours. Mr. Mann asked me to release the boys before dinner. I said I did not know, but would see about it. I told Mr. Mann this, because it depended upon how the investigation of the case would proceed. Before I saw him at the tank, I do not remember Mr. Mann asking me that the boys should be bailed. At the tank he asked me several times—in fact, he badgered my life out. I said I would be going

down to see how the case was getting on. To the best of my recollection, I do not think I discussed with Mr. Mann that I had the power to keep the boys 24 hours without bail. I do not recollect saying anything to Mr. Mann about the 24 hours. Mr. Mann did tell me that there were several boys among those I had arrested who had never gone to the *jatra*.

Q.—Did you not say in reply to that statement of Mr. Mann's, "I cannot help it : the innocent must suffer with the guilty ? "

A.—I believe something of that sort passed.

Q.—Did you not make this remark to Mr. Mann :—" I shall make the boys pay in the shape of fine what I have subscribed to the *jatra* ?"

A.—No. Before Mr. Mann went away, I gave him no final answer as to whether I would release the boys within 24 hours or not. I do not recollect that Mr. Mann said anything to me about my power to keep the boys for 24 hours. I am not prepared to say that I had no conversation with Mr. Mann about the 24 hours, but I certainly have no recollection of it at the present moment.

Q.—Were you aware at the time that you did so, that to refuse bail in bailable cases is illegal ?

A.—Bail was never refused to my knowledge. I was aware that to have refused bail would have been illegal. When I got into my *tum-tum* on leaving the hospital. I went to a distance of 2 or 3 yards from it, and said to the Sub-Inspector that it would not be necessary to keep the boys for 24 hours. I did not intend others to overhear that. This happened before I saw Mr. Mann at the tank. I saw Mr. Mann there two hours after. I did not tell Mr. Mann that I had given these private instructions to the Sub-Inspector. I may have told Mr. Mann that I merely wanted to frighten the boys : I do not recollect. I won't deny it. I do not remember, but very possibly I did.

Q.—Now that you remember you whispered into the Sub-Inspector's ear about not keeping them for 24 hours, does that bring to your mind that you had said he was not to let them go for 24 hours ?

A.—I cannot say so positively.

Q.—What was the necessity for your whispering this into the Sub-Inspector's ear ?

A. Simply that he might know that what I said was not to be acted upon. I know Nobin Dey, the formal complainant in this case. The first time I saw him after the occurrence was in the bazaar. Nowhere else to my knowledge. I have spoken to him in the last 2 or 3 days. I do not think I saw him before that. I think that at one time it was quite possible the *barwari* people were not going to press the charge. I cannot be certain now whether that was before the hearing of the case. I have not kept a copy of the record. I am not sure whether it was before or after the first hearing of the case. I have had a conversation with the *barwari* people as to the desirability of going on with the case. I do not think it was with

Nobin Dey. I certainly told them that they were not to back out of the case. I did send for some of the *barwari* people. There were about half-a-dozen of them, but I do not think Nobin Dey was amongst them. I sent for them for the purpose of urging them to go on with the case. I did tell them, "I have done so much for you, you must not now leave me in the lurch." I did not send for the *barwari* people again. I believe they had been to my place once before of their own accord. Before the case was brought into Court on the 25th July, I certainly did not remark to anybody that as the case had got into the newspapers, it could not now be dropped. I do not recollect anybody bringing me a translation of any vernacular paper. I believe I took a copy of the *Statesman* to Mr. T. in which I had been described as a "lunatic." I have no recollection of taking any other newspaper to Mr. T. I also showed Mr. O. (the presiding Magistrate) the same copy of the *Statesman*.

Q.—What was your object in showing it to Mr. O.?

A.—Because I thought the paragraph very amusing. The fact is, there was a question as to whom the honor of the title of fool really belonged, whether to Mr. T. or to Mr. O., but it was eventually agreed to split it. I thought it a very good joke, knowing that it was only Mr. Knight (Editor of the *Statesman*).

Q.—*Did it not strike you that it was very improper for you to take a paper of that kind to an officer before whom the case was pending?*

A.—*No it did not so strike me.* Mr. T. was not in Krishnagar when the occurrence took place. He arrived, I believe, on the Saturday morning following.

Q.—*Did you discuss this case with Mr. T. on his arrival?*

A.—*O dear, yes! several times.* We threshed it out. *In fact I am hand-in-glove with Mr. T. in this case.*

The Court—I doubt if you can go on with these questions. Mr. T., as the head police officer of the district might have had any number of conversations with Major R., but they are privileged communications, and in the interest of the State, should not be revealed without Mr. T.'s consent. Before allowing these questions, I must consult him. There is a Government order on the subject.

Mr. Ghose—But Mr. T. is not a police officer. Government orders have not the effect of law. The law is supreme, and we cannot have Government Circulars to override it. The law says that in certain cases certain matters are privileged, but I have never before heard that communications between a Police Officer and a Magistrate are privileged. If, when Mr. T. is examined, he says that answers to my questions would divulge a State secret, or if the Government has ordered that this should be regarded as a State trial, that would be different. The Court is probably thinking of a section of the

Evidence Act which refers to official records. I shall gladly forego further cross-examination if either Mr. T. or Major R. will say that the public interests are likely to suffer by the disclosure of any of their conversations regarding the case. If, however, they say that the public interests will suffer, I am entitled to cross-examine them as to their grounds for saying so.

The Court—I cannot allow the cross-examination upon this point to go on, unless I hear some definite expression of opinion from the two officers concerned.

Mr. Ghose—Major R. has not objected yet, but if he has any objection, it should be recorded. There are certain matters to which the Court cannot object; it is the witness' privilege.

After some further discussion, the cross-examination of Major R. on this point was reserved, pending reference to Mr. T. the District Magistrate.

Mr. Ghose—Then I understand the Court has ruled that this matter is to be reserved although Major R. has made no objection.

The Court—Yes, I want to hear what Mr. T. has to say.

Mr. Ghose—But I may not call Mr. T. at all.

The Court—In that case the precaution, though a necessary one, would prove to be a needless one. I consider that Mr. T. has the right to object as he is a prospective witness.

Major R.'s cross-examination continued.—I told the Sub-Inspector that the case had better not be sent up until Mr. T.'s return. My object in giving that order was that I might have the benefit of Mr. T.'s advice.

Q.—Then it was with the benefit of that advice that you directed the case to be sent up?

A.—The case was practically forced to go up. It was not sent up in consequence of that advice.

Q.—Did that advice induce you to send up the case?

A.—"Induce" is hardly the word. The effect of Mr. T.'s advice was to convince me that it would be as well that the case should not be sent up, but that an arrangement should be made to punish the boys departmentally. There was no help but to send up the case, because I could not manage to arrange to send up the case departmentally. I remember a deputation of pleaders waiting on me and Mr. T. to induce me not to prosecute this case.

Q.—Did you and Mr. T. then say you were willing to make over the case to Mr. Mann on the condition that some of the boys should be flogged, and the others should have their lives made a burden to them by being "worried" for a month? Did you not make that a necessary condition of dropping the case?

A.—Yes. That was the impression left on my mind.

Q.—Is it not a fact that Mr. Mann declined to give such an undertaking?

A.—I am not aware of that. Mr. Mann and Mr. T. had it out between themselves. I had nothing to say to that.

Q.—About the time that these negotiations were going on, did you not remark to Mr. T. " Why don't you do your duty and make over the case to Mr. O." or words to that effect ?

A.—Certainly not : I should never think of making such a speech to Mr. T. He is my superior officer, and is responsible for his own actions. I hope I shall not be so wanting in common courtesy.

Q.—Did you make any suggestion, however courteously, that the only course left to him was to make the case over to Mr. O. ?

A.—*I asked him if he would be* SO GOOD *as to make over the case to Mr. O. for trial.*

Q.—And what did he say ?

A.—I don't think he said anything at that time ; the matter was left an open question.

Q.—*Where was this suggestion made ?*

A.—*In Mr. T.'s south verandah.*

Q.—Had you any necessity for suggesting to him before what Magistrate the case should go?

A.—No: no necessity. But I thought it just as well to have a European Magistrate, instead of one of the native Magistrates, who are always amongst the boys and might be biassed.

Q.—In other words, you thought that any of the native Magistrates might acquit the boys?

A.—I preferred them to be tried by an English Magistrate. I thought I was more likely to get justice from a European Magistrate.

Q.—Is it not a fact that you thought that a native Magistrate would be likely to let off the boys ?

A.—*The chances of their getting off would be greater, and the chances less of any European Magistrate letting them off.*

Q.—*Do you often make such suggestions privately in cases in which you are interested ?*

A.—*Yes, I have occasionally done so. I have often said to Mr. T. I wish you would give me so-and-so for this case.*

Q.—*And these suggestions you make verbally in the house of the Magistrate.*

A.—*Yes.*

Q.—*Have you talked about this case with any Magistrate besides Mr. T.?*

A.—*Yes, in a general way, I have joined in conversations about this case. For instance, one evening I remember talking about it with Mr. O. I think it was after the first hearing of the case.*

Q.—Did you speak to him at all before the case was made over to him ?

A.—*I simply mentioned the case. I think I said to him : " I am going*

to get you to try that students' case," and he said, "All right." There was nothing further said.

Q.—*Had you any talk with Mr. O. about this occurrence?*

A.—*Yes.*

Q.—*Did you tell him your view of the affair?*

A.—*In a narrative form I did.*

Q.—After the case was made over to Mr. O., did you have any conversation with him regarding the case?

A.—I have already said that I did speak to him after the first hearing; but subsequently finding that you were making a big business of it, I avoided it.

Q.—When you asked Mr. T. to make over the case to Mr. O., I believe you were aware that Mr. T. was the appellate court?

A.—No, I was not aware of it at the time.

Q.—Do you mean to say that you were not aware of the fact that appeals from Mr. O.'s decisions are heard by Mr. T.?

A.—If you ask me that way, I admit they are, but that never crossed my mind.

Q.—Then you do know and did know at that time that appeals ordinarily lie to Mr. T.

A.—Yes.

Q.—Did you ever tell Mr. O. that the boys had become very unruly, or make any other general statement against the conduct of the boys?

A.—*Possibly I did, but have no precise recollection. It is highly probable that I did.* They won't be unruly if I remain here.

Mr. Ghose—I beg to differ from you. The course you have adopted is best calculated to make them unruly.

Major R.—Of course if you incite them, they will be.

Mr. Ghose—On the contrary, my only wish is to establish, to quote your own words, "the supremacy of the law."

Major R.—Indeed, that is all that I wish to do.

Cross-examination continued.—I did censure Peary, head-constable, for not arresting the boys. I walked into him sixteen annas.

Q.—Had you any conversation with Mr. O. about this case on the 26th July and the 2nd August?

A.—After you took up the case we left it alone. After the cross-examination of Bipro Das (the Inspector) and the Sub-Inspector, I do not think I had any conversation with Mr. O. on the subject. Yes about the time the *Statesman's* report appeared (30th July), I did have a conversation with Mr. O. by way of *jhugra tukrar* (quarrel and wrangle).

Q.—What was the *jhugra tukrar?*

A.—*Well about that time Mr. O. and I had a discussion about the law in regard to this case. Mr. O. said that up to that time no offence had been disclosed.*

Q.—*Then I suppose you argued with him that an offence* HAD *been disclosed ?*

A.—*Yes. He did not agree with me, and he laughed at my exposition of the law.*

Mr. Ghose—Yes. Any Magistrate, I should have thought who knew his business would laugh.

Q.—Well, he laughed and did not agree with you, and you tried to convince him ?

A.—*Yes, but not successfully.*

Q.—*Where did all this take place ?*

A.—*It was in Mr. O.'s own house.*

Q.—And this was after all the evidence of the witnesses for the prosecution had been recorded, and after Ashutosh had been examined ?

A.—*Yes. About the 2nd August.*

Q.—Then you were very anxious to convince Mr. O. that the facts amounted to an offence ?

A.—*Certainly, I was very anxious to gain my case—as much as you are to gain yours.*

Q.—*And was it with that object you went to convince Mr. O. at his house ?*

A.—*Certainly.*

Q.—Did you tell anybody at the beginning of the case, or before that, words to this effect : "I do not care whether the case stands or falls ; the boys will be *hairanned* and *perashanned ;* (worried and harassed) even if they get off, they will receive a lesson ? "

A.—It is highly probable I used the words *hairanned* and *perashanned* ; the expression is so entirely my own, that I feel sure I must have used it.

Q.—Might you have said so to Mr. O. ?

A.—No, I do not think so. I do not recollect having said so to Mr. T. I might have said so to Prasanna Babu (a pleader).

Q.—So you did think likely the boys might get off ?

A.—Certainly not. I thought it a clear case.

Q.—Did you say, "At any rate their parents would have to pay for the stamps and pleaders' fees, whether they got off or not ? "

A.—Yes.

Q.—While this case was going on, and after it had commenced, and even sometime before that, were you quite sure what the object of the "unlawful assembly" was ?

A.—Yes, to break up the *jatra*, of course.

Q.—Were you all along certain of the clause of section 141, that the case would fall under ?

A.—Yes, clause 5. That has been my opinion since the case has been launched. I never said that it came under clause 3. Clause 3 was suggest-

ed, but I stuck to clause 5. I simply made the case over to the Inspector, and did not bother my head about the clause. My impression was that the offence would fall under section 141. I did not suggest any other offence ; but Mr. T. suggested section 268 (Public Nuisance), and according to that suggestion, I mentioned that section to the Court at the last hearing of the case.

Q.—Do I understand you to mean that you never at any time thought that the object of the boys was to commit mischief or intimidate criminally ?

A.—Yes, by breaking up the *jatra*.

Q.—Then you thought that the object of the assembly was to break up the *jatra*, and it did not matter to you under what section the case would come ?

A.—The fact was that the *jatra*, had been broken up ; the object of the boys was palpable—it was to break up the *jatra*, and that was quite sufficient for my purpose; our business was to find out who had broken up the *jatra*, and to take them into custody. I felt sure the law would "fetch 'em somehow." I did not bother myself about sections ; it was sufficient for me that a disturbance had occurred.

Q.—Have you ever been at Oxford on Commemoration day ?

A.—No.

Q—Have you ever been at Exeter Hall when a popular preacher has been speaking ?

A.—No. Exeter Hall is not in my line. I always keep out of it.

Q.—If a public speaker were stopped by clapping and hissing, would you not also consider that a disturbance and a riot ?

A.—Not unless some force had been used.

Q.—On the 7th of this month, did you write to anybody to this effect that "I am in a position to say that charges will be drawn up at the next hearing of the case ? "

A.—I did.

Q.—What made you say that you were in a position to do so ?

A.—Because the Inspector informed me that a charge had been drawn up, and I asked Mr. O. if it were true.

Q.—Did you say to anybody that you would have dropped the case at this stage, if it had not been " official cowardice " to do so ?

A.—Mr. T. wrote over to inform me that he had sent a communication to Mr. Mann, in which he had used those words, and in which I entirely acquiesced. I did not wish it to be thought that I was afraid of you, Mr. Ghose, or anybody else.

Q.—Then I understand that but for this consideration of " official cowardice, " you would have dropped the case ?

A.—I should not have consented to drop it altogether; it depended upon

how the opposite side took it. I believe the first suggestion came from Mr. Mann.

Q.—Did you tell anybody that you must press for a severe punishment?

A.—I believe I did.

Q.—Did you say that if these boys had not been defended by Mr. Ghose, they would have been let off with a slight fine?

A.—No. I used no words to convey that meaning. I said that I thought a great "shindy" had been kicked up about a small matter, and that it would be just as well if a fine were imposed. I knew that the boys could not pay, but I know there is a fund which can stand it.

By Court.—Do you remember receiving any telegram from the Inspector-General of Jails from Jessore regarding this case?

A.—The Lieutenant-Governor wanted to know what progress it had made; it was a day or two before we went to Ranaghat. I went to Mr. O. on receipt of that telegram to confirm my own impression, and to give the Lieutenant-Governor accurate information.

Major R., re-examined by Inspector Bipro Das Mitter. I went to the hostel on my own account, because the Sub-Inspector said he was obstructed in the inquiry. Mirtunjoy Babu, Ram Babu, the Government pleader, Prasanna Kumar Bose, and Jadunath Chatterjee, pleaders, came to ask me to drop the case.

Q.—Why did you wish the case to be tried by a European Magistrate?

A.—There was a case before a native Deputy Magistrate in which the accused was charged with rape, but the Deputy Magistrate would not send him to *hajut*, but took him about from place to place till 2 o'clock in the morning. (Objected to by Mr. Ghose.)

Mr. Ghose here wished the Court to ask Major R. whether that case did not happen after the trial of the present case had commenced.

A.—Yes, that case only confirms my view of the influence of pleaders on native Magistrates.

Major R., further cross-examined on 16th August by Mr. Ghose—Before I ordered the arrest of the boys on the morning of the 13th July, I had heard nothing about the cutting of the benches.

Q.—Were you aware on that morning, before you ordered the arrests, that the *jatra* had been going on for nearly two hours before it was disturbed?

A,—I never gave the thing a thought.

Q.—Before you ordered the arrest of the boys did anybody tell you what motive the boys had in causing the disturbance?

A.—No. It would be too late to tell the colour of its feathers after the bird had flown.

Q.—When did you first hear that the benches had been cut or removed that morning?

A.—That morning I did not hear that the benches had been cut or removed. I did not hear it at all that day. I heard it for the first time in this Court.

Q.—Had you been informed in any way before the case came into Court that there had been any row about seats.

A.—A row took place, and that was quite sufficient for me. I did not think it worth while to enquire how it commenced.

Q.—When you went to the *barwari*, is it the fact that you noticed your own constables were present there?

I did not notice it. I had to send for the Head Inspector. I saw the constables who were at the *jatra* before I went to the *barwari*. I did not ask these constables how the row originated.

Q.—*I suppose that from the beginning you have been acting in concert with Mr. T. (the District Magistrate) in this case?*

A.—*We are hand-in-glove in this matter—if you like, 16 annas.*

Q.—You told us yesterday that you had discussed the evidence as well as the law of the case from time to time with Mr. T.

A.—I did not say we discussed the evidence. *We discussed the law, and went through the Penal Code together.*

Q.—*Did you ever say to Mr. O. that Mr. T. had agreed with your view of the case?*

A.—*Having had a consultation with Mr. T., I took sense of the law as he pointed it out to me, and then I repeated it all to Mr. O., and, as I told you on the last occasion, he did not agree with me.*

Q.—Did you tell Mr. O. you had consulted Mr. T.?

A.—I do not remember. It is part of my duty to see and consult with the Magistrate daily. *It would be a work of supererogation to have told Mr. O. that I had had a consultation with Mr. T. I took for granted that he knew it. I said that I should like Mr. O. to try the case, because I did not think the native Magistrates here would do justice to the case. I told Mr. T. so at the time. That is why I selected Mr. O. so that there might be no "bazaar sympathies."*

Q.—During your residence at Krishnagar have you ever been to the house of any of the native Deputy Magistrates to talk about cases pending before them in which you are interested?

A.—I do not think I have. Since I have been in this district, I have had many cases in which I am interested before native Deputy Magistrates, I frequently go to the houses of native gentlemen. I have been to the house of Babu Tarini Kumar Ghose, Deputy Magistrate.

Q.—Was it you who brought to the notice of Mr. T. that the prosecutors were willing to go on with this case?

A.—I did.

Q.—Did you ask Mr. T. to issue a summons on the prosecutor, and tell him to go on with the case?

A.—I know nothing about it.

Q.—Did you at any time tell Mr. O. what you expected Ashutosh Mukerjee to prove, before he was examined?

A.—Yes, I mentioned it in general terms in the form of a narrative.

The District Magistrate Mr. T——— was subsequently called and was cross-examined by the defence; the following portions of his evidence are important:—

Q.—Do you consider yourself as one of the prosecutors in this case?

A.—*As head of the police I take an interest in it.* I was away when the occurrence took place. I gathered the facts of the case from the District Superintendent and the police papers, also from some pleaders. The first I heard of it was from Major R.

* * * * * *

When the case came up in *A* form, I certainly held that an inquiry should be held departmentally or criminally. I did not then take the trouble to inquire if the facts disclosed an offence. I left the consideration of that to a judicial court. Major R. might have suggested to me that the case should be made over to Mr. O. *If he says he did, I would certainly take it for granted.* He might have given me his reason for wishing, but I cannot recollect. *Major R. occasionally suggests to me that I should transfer cases to particular Magistrates. I look upon the transfer of cases as a judicial and not an executive matter.*

Q.—*Then in judicial matters do I understand that you generally allow the District Superintendent, or any police officer, to suggest to you what course should be adopted in a particular case?*

A.—*He might make a suggestion, and if I saw no harm in it, I would make no objection.* To my recollection Major R. did not tell me that no native Magistrate ought to try this case.

Q.—Has he ever made such a request to you, that a particular case should not be made over to a native but to a European Magistrate?

A.—*Certainly, he did so in the case of Nadir Ally.* The High Court set aside my order of transfer. Since making over the case to Mr. O., I have been discussing daily the case in all its legal aspects. I *made suggestion as to what sections should be pressed.* I have given instructions to the Inspector to press for a conviction.

Q.—What made you give such instructions?

A.—Because of several things that have come out in the way of obstruction, threats, newspaper writing, and subscriptions from respectable zemindars; also because the boys require a lesson to counteract what they are being taught by outsiders, and to teach them that they must not be a

public nuisance by doing acts which must necessarily annoy the public. Latterly, also, I have reason to believe that our good faith has been impugned, and I was very anxious for the ordeal which I am now going through. By our good faith, I mean Major R.'s and mine.

Q.—Have you any reason for supposing that your good faith has been challenged ?

A.—A letter which I saw gave me this impression, I also saw that my examination was to be taken, and certain facts were to be disclosed. By "obstruction" I mean that so many persons are pleading to get the boys off, and the District Superintendent being threatened with a big case as the result of his persistence. In any case I would have pressed for a conviction: I only do so more particularly now. Had there not been this idea that we have been acting unjustifiably, I am not sure but that I might have listened to a compromise if it could have been effected. *Certainly I am personally interested in the conviction of the boys, both as the head of the district and an official whose action has been questioned.* I do not think I wished when I made over the case to Mr. *O., that any particular boy should be convicted, but that the case should result in a conviction if possible.* Of the subscriptions from zemindars, I have heard from several people as well as from Major R. I have made no personal enquiry into the merits of this case.

Q.—*Have you had any talk with the presiding Magistrate about this case ?*

A.—*Yes, on two occasions, as friends, but not as between superior and subordinate—not by way of argument.* Once I asked a question about the general aspect of the case, and another time the information was volunteered. It is not my custom to consult with judicial officers as to the particular sections under which a case should be tried.

Q.—While you are having discussions with Major R. regarding the legal aspect of the case, was the fact present before you that, in the event of an appeal against the presiding Magistrate's decision, you were the appellate court ?

A.—Yes, and it was for that reason that I had made up my mind from the first to apply to the Commissioner for an appellate court, and not hear the appeal myself.

After a protracted trial and some adjournments the case resulted in the boys being acquitted on the 19th August on the ground that no offence had been disclosed.

The proceedings in this extraordinary case attracted the attention of the Lieutenant-Governor of Bengal—Sir Rivers Thompson,—who, in an elaborate Resolution, transferred and

otherwise punished both the District Superintendent of Police, Major R., and his friend, Mr. T., the District Magistrate, with whom he was "hand-in-glove," an officer of many years standing. The following extracts from the Government Resolution will be read with interest:—

6. * * * It is surprising that a perusal of the papers should not have shown an officer of Mr. T.'s experience and standing that such a charge could never hold good, and if he had made the enquiries, which he ought to have made, into the circumstances of the case, and the manner in which the police investigation had been conducted, it is scarcely possible to believe that he would not have seen that the case should aot be proceeded with. He has acknowledged in his evidence that he made no such enquiry. He further committed the very grave error of allowing Major R. to suggest to him that a particular officer should be selected to try the case. It is no defence or palliation of this indiscretion to assert as Mr. T. asserts, that other complainants have made similar applications to him; because Major R. in his position of District Superintendent of Police, was not an ordinary complainant and the very least acquaintance with the circumstances of the case must have shewn that he was pressing this prosecution with an amount of eagerness aad pertinacity which only some great State trial would have justified. The reasons, too on which Major R. urged his application were unjustifiable; and if Major R.'s extremely improper attempt to induce the shop-keepers to press the case had come to his knowledge the Magistrate should have taken immediate and serious notice of it. He states that he knew nothing about the men being sent for. But one of the worst features in the whole case is that a prosecution, commenced without any legal justification, has been pressed forward in a peremptory and injudicious manner without any real control from the Magistrate of the district and practically at the will and dictation of the Superintendent of Police. The Lieutenant-Governor is certain that not in many districts of Bengal could such a perversion of authority have been tolerated, and, in his opinion, here it was clearly the duty of the Magistrate, to instruct the police to abandon the case, and if he considered it necessary to take any further notice of the turbulent conduct of the boys, he should have called the attention of the Education Department to the matter. It is quite clear from the communication addressed to the Director of Public Instruction by the Principal of the Krishnagar College, that the latter was prepared to deal in an adequate manner with any misconduct, not amounting to a criminal offence, of which the students might have been guilty.

7. It is not necessary to dwell at length on the subsequent proceedings The Lieutenant-Governor has read with surprise and regret the evidence

of both Mr. T. and Major R. He observes that they urge that several of their recorded statements require explanation or correction, but they have not supplied this defect in their explanations. Mr. Rivers Thompson must express his strong reprobation of the endeavour made by Major R., in private conversation, to persuade the Assistant Magistrate to take his view of the legal aspects of the case, and the attempt made on the 15th August to obtain a conviction for nuisance under section 290 Penal Code, when it was clearly apparent the charge of unlawful assembly under section 143 Penal Code, would not stand, seems to have been injudicious and vexatious. The complaints now made by Mr. T. and Major R. of the inefficient way in which the prosecution was conducted are unintelligible. Major R. stated in his evidence that he considered himself *de-facto* prosecutor, and Mr. T. stated that he had discussed the case daily with Major R. as to its legal aspects; that he had suggested the sections and that he had instructed the Inspector who conducted the prosecution to press for a conviction. If therefore, the prosecution was mismanaged, these two officers must on their own shewing, be held responsible for its defects. But the Lieutenant-Governor is unable to accept the suggestion that if the case had been differently conducted in Court the result would have been different. It seems clear to him that if Mr. O. had more experience in judicial work, and if he had been an officer of greater standing, he would probably have seen his way to dispose of the case at a very early stage of the proceedings. He possibly made some mistakes in procedure, notably in not reading over to Mr. T. and Major R. the evidence given by them. But the decision come to by him was undoubtedly correct, and having regard to the official pressure exerted for a conviction, even if only with the idea of a nominal penalty, it is clear that the right result of the case does much credit to his impartiality and firmness.

8. Upon the whole case the Lieutenant-Governor regrets to be constrained to record that he has never come across proceedings which betrayed a greater want of sense and judgment than those which he has now been obliged to criticise and condemn. The precaution of half an hour's temperate enquiry in the first instance, must have satisfied the district authorities, not only that no penal offence had been committed, but that taking the occurrences in their most objectionable light, they exhibited a sudden outbreak on the part of a parcel of school-boys to express a not unreasonable dissatisfaction at the treatment they had received at the *jatra*. To magnify this into a criminal offence, to haul the culprits to the police lock-up, to threaten them with a long detention under custody and to commence and carry on a prosecution against them in the court with the express view of causing harassment and annoyance, are acts which are as unjustifiable as they are discreditable to the administration. This want of judgment and discretion on the part both of Mr. T. and Major R. is

aggravated by the fact that overtures for conciliation on what appear to the Lieutenant-Governor to be very reasonable terms, offered by the Counsel for the defence were summarily rejected; and that among the reasons assigned by Mr. T. for pressing for a conviction under the Penal Code, are the extraordinary ones that there had been "obstruction, threats, newspaper writings and subscription from outsiders." and that he wished to court an enquiry into the good faith of himself and the District Superintendent. Mr. Rivers Thompson finds it difficult to understand how officers in their position could have allowed themselves to be influenced in pushing forward a criminal prosecution by considerations such as these, and he would have rejected the imputation of these motives as incredible, if based on evidence less convincing than the admissions made in Court and in the explanations now received. It is not by a mere expression of censure that the Lieutenant Governor can meet such a case and his sentence must be that Mr. T. should be degraded to the second grade of Magistrates for six months, and that Major R., now in the second grade, should be reduced to third grade of District Superintendents of Police, and be debarred from promotion for one year. Both officers will be transferred from a district in which, by these recent proceedings, they must have lost all influence for good. It is with extreme regret that the Lieutenant-Governor finds himself obliged to come to this decision, because he is not unaware of the good services which Major R. has rendered in the Police Department.

The disclosures made by Major R. and by Mr. T. will no doubt seem startling to those who are accustomed to the procedure of courts of justice in England, but they are nothing new to those who are conversant with the manner in which criminal justice is administered in India under the present system, combining executive and judicial power in one and the same Magistrate. The District Magistrate is generally "hand-in-glove" with the District Superintendent of Police and all subordinate magistrates cannot but be under the direct influence of the District Magistrate who guides and shapes their opinions in all judicial matters. The trying magistrate Mr. O. found himself in a most difficult position; he could not help being under the influence of his official superior, and although he ultimately did justice in the case he did not do so without considerable hesitation and reluctance.

CASE NO. 14

The Rungpore Deer Case—1886

In the district of Rungpore, Babu Annada Prasad Sen possessed considerable landed properties, and lived in the same house with his paternal aunt, Prasannamayi Dasi. For three years prior to 1886, he had a tame deer of the species known as swamp deer, which was first brought when very young and always believed to be quite harmless. The deer used to be kept within a bamboo enclosure six feet high and a servant was specially appointed to look after, and attend to it. On the morning of the 6th September at about 7 o'clock, Mr. S—h, who was Assistant Superintendent of Police at Rungpore, was informed by a man named Ainddin, who had been in the service of a gentleman who was staying with Mr. S—h, that the deer had got loose. Mr. S—h thereupon took his rifle and went to the house of the zemindar, Annada Prasad Sen, and found that the zemindar was not then in the district. According to the evidence of the men present in the house, Mr. S—h sent for the zemindar's Dewan, Pyari Mohun Bose, and told him that his master had twice deceived him: (once he had refused to lend his elephant after having promised to do so, and on another occasion had insulted him in connexion with a procession), and said that he would see the zemindar punished. While Mr. S—h was speaking to the Dewan the servants of the house were trying to drive the deer into the enclosure, but did not succeed in doing so. Thereupon Mr. S—h shot the animal dead within a few yards from where he was standing. A pleader of the High Court who happened to come to the house was instructed immediately by the Dewan to inform Mr. S—h that he had needlessly shot the deer and that proceedings would be instituted against him on behalf of the zemindar for his having done so. Immediately afterwards the Dewan sent the dead animal in charge of some servants to Mr. N., the District Magistrate, in order that he might have an opportunity of seeing that it had no horns, and that he might also be informed of what had been done

by the Assistant Superintendent of Police. Mr. N., instead of listening to the complaint, got enraged at the sight of the deer, ordered the carcass to be removed instantly from his house and declined to listen to any complaint against the Assistant Superintendent of Police. Later in the day Mr. S—h sent for Ainuddin and insisted upon his preferring a complaint at the Police Station against the Dewan, Pyari Mohun Bose, and this man accordingly at 2 P.M. on the same day, under orders from Mr. S—h, preferred a charge under section 289 of the Penal Code for the offence of neglecting to take care of a dangerous animal in his possession. Mr. S—h having secured the support of the District Superintendent of Police Mr. S., and of the District Magistrate Mr. N., caused his subordinate police officers to send up the charge as a true one to the court of Babu Chandi Charan Bose, a Deputy Magistrate. The case against the Dewan was accordingly heard on the 8th and 9th September, and all the witnesses cited by the police were duly examined. Mr. S—h volunteered to give evidence as an important witness but was not fully or properly cross-examined by the accused, the Deputy Magistrate having intimated that such cross-examination was unnecessary as no case had been established on behalf of the prosecution. The result of the trial was that the Dewan, Pyari Mohun Bose, was acquitted without being called upon for his defence, but unfortunately the Deputy Magistrate expressed no opinion upon the question as to whether the evidence adduced by the police regarding the vicious propensities of the animal was true or false. This decision of the Deputy Magistrate, however, was very distasteful to Mr. S—h who, after a private consultation with the District Superintendent of Police, and the District Magistrate decided to prosecute the aunt of Babu Annada Prasad Sen, the zemindar, as she was, in the Zemindar's absence, the head of the family. The Sub-Inspector of Police was set up as a formal complainant and he applied on the 15th September 1886, for a summons against the lady. The Deputy Magistrate at first was reluctant to issue any

summons, but instead of taking upon himself the responsibility of refusing the summons thought it safer for himself privately to consult Mr. N., the District Magistrate, under whose advice, five days after, the Deputy Magistrate, decided to summon the lady to answer a charge under section 289. The case accordingly came on for hearing before the same Deputy Magistrate on the 14th October, when Counsel from Calcutta was engaged at considerable expense, to defend the lady. What happened at the commencement of this trial will be found in the following report as taken from the *Statesman* newspaper of 19th October, 1886:—

On the Magistrate taking his seat, Mr. Ghose addressing his worship, said:—I appear, Sir, on behalf of the lady, Prasannamayi Dasi, and before the case is proceeded with, I believe you will agree with me in thinking that it is but fair to the accused that she should know the circumstances under which the prosecution against her originated, as there is nothing disclosed at present on the record. I have been informed, Sir—and you will correct me if my information is wrong—that after the case against Pyari Mohun Bose had concluded, that is, after he had been acquitted, an application was made to you for a summons against the lady; that you at first disapproved, of the proceeding, and recorded your disapproval, but that afterwards, after a lapse of five days, you granted the application. I should therefore like to know, Sir, if what I state is correct, under what circumstances the summons was subsequently ordered to issue against the lady, and whether anything transpired in the interval to induce you to change your mind.

The Magistrate—Yes, first let me take evidence in the case, and I shall then let you know the circumstances under which I granted the application.

Mr. Ghose—But surely, Sir, that would be at a very late stage. I see that a letter or petition was presented to you on the 16th September, and that it was not till the 21st September, that you were pleased to direct a summons to issue against my client. What I would like to know is, why there was this delay in granting the application, and the circumstances which led to the issue of the summons, as it is very important I should know them at the beginning.

The Magistrate—I can only say this, that I consulted the Magistrate—there is no harm in my taking his opinion—whether it would be proper for me to summon Prasannamayi, and in accordance with his opinion I issued summons.

Mr. Ghose—Then am I rightly informed, Sir, that when the application was first presented to you, you declined to issue the summons, but that you granted it at the suggestion of the Magistrate?

The Magistrate—What passed between me and the Magistrate is private, and I don't think you have any right to know it.

Mr. Ghose—There can be nothing private in a judicial proceeding. I am entitled to know who my prosecutor is, as the law requires that the complainant should be examined, and no complainant has yet been examined.

The Magistrate (pointing to the witness Ainuddin)—He is the complainant.

Mr. Ghose—No, Sir, he is not, and has never been the complainant. He never preferred any charge against the lady before the police at any time. The application against the lady was made by Kasi Mohun Sen, Court Sub-Inspector, and as he applied for the summons, I should like to begin by examining him, he being the complainant.

The Magistrate directed Kasi Mohun Sen to be called, but was informed that Kasi Mohun had taken a week's leave and left Rungpore.

Mr. Ghose—This is extraordinary, especially as the first thing to be done is to find out who is the prosecutor, and to examine him.

The Magistrate—You can ask the District Superintendent who appears as prosecutor.

Baboo Nil Kamal Banerjee (another Court Sub-Inspector) said he was instructed to appear as prosecutor.

Mr. Ghose—He is not the complainant.

The Magistrate—He may appear as public prosecutor.

Mr. Ghose—I have a right in law to examine this man Kasi Mohun Sen, on whose written complaint process has been issued. As you know, Sir, a magistrate can take cognisance of a case only in one of three ways :—1. On a complaint. 2. On a police report, as defined by the Code. 3. On suspicion, or personal knowledge. So far as I can see, this case originated on a complaint, there being no A form or police report against the lady. Kasi Mohun Sen is the complainant, and he is not here.

The Magistrate—He is a complainant in his public capacity.

Mr. Ghose—There is no such a thing as complainant in a public capacity. He is either the complainant or he is not.

The Magistrate—But his letter may be called a police report.

Mr. Ghose—There is no police report, but a letter, or petition, or whatever else it might be called, upon which the sanction for summons was given. It is, as I am sure you will allow, Sir, of the utmost importance to me, that I should know who my prosecutor is. I see in the original list of witnesses sent by the Police that Mr. S—h's name is mentioned. He was considered a very important witness in the case against Pyari Mohun Bose, and was examined on that occasion. I should like to know if he will be examined to-day in this case.

The Magistrate—His name appears in form A. (To the Court Inspec-

tor). Are you going to examine Mr. S—h ? You ought to be able to say so at once.

Babu Nil Kamal Banerjee—I am not acquainted with the facts of the case, and leave the matter to the Court.

The Magistrate—Kasi Mohun Sen, the Court Sub-Inspector, who applied for the summons in this case is not here.

Mr. Ghose—Whoever is pulling the strings should, in justice to all concerned, appear and take the responsibility of the prosecution. The law says the complainant should be examined. Ainuddin, the complainant in the other case before the police, never mentioned the same of this lady, and as the summons in this case was issued on the application of Kasi Mohun Sen, I should like to examine him, but, as you see, Sir, he does not appear.

The Magistrate—This is a police prosecution, and the police have brought these men (reads list of witnesses).

Mr. Ghose—You issued the summons, Sir, not on any police report, for there is none, but on a letter or petition of Kasi Mohun Sen. However, I do not object to the witness, Ainuddin, being examined now, but the person on whose petition action was taken, must also be examined. If, however, Mr. S—h is going to be examined, I will show that he is the real complainant, and I shall be glad to give up Kasi Mohun. The sooner it is understood that a criminal prosecution of this sort is a serious matter, and should not be lightly undertaken, the better for all concerned. I confess I am not a little surprised at the hesitation displayed to call Mr. S—h, the person who killed the deer, and who is the prime mover in this case.

The Magistrate (to his clerk)—Let me see the list of witnesses, and see how many persons they are going to call.

(The Magistrate here entered into a short conversation with Babu Nil Kamal Banerjee, who afterwards went out to consult Mr. S—h for several minutes.)

Mr. Ghose—We are losing very valuable time, Sir. The police should have known what course they intended to adopt. This is scarcely the time for consultation.

Babu Nil Kamal Banerjee, Inspector, on his return, intimated that it had been decided not to call Mr. S—h as a witness, and handed to the Court a fresh list of witnesses.

The Magistrate then read out the the names of the witnesses.

Mr. Ghose—Then I understand, Sir, that Mr. S—h, who represents the police, who killed the deer, and who was a most important witness in the case against Pyari Mohun Bose, does not venture to come forward in this prosecution.

The Magistrate—His name is not in the list of witnesses now handed to me.

Mr. Ghose—Then, Sir, it will be my duty to present to you certain petitions. As I am anxious, on behalf of my client, that this case should be disposed of at once, and as Mr. N., the District Magistrate, will, I hear, be leaving the station to-day, the first petition I have to present is this :—

To the Deputy Magistrate of Rungpore.

The humble petition of Srimati Prasannamayi Dasi of Rungpore.

Humbly Sheweth—

(1). That your petitioner is at present being prosecuted under section 289 of the Indian Penal Code, on a complaint ostensibly brought by one Kasi Mohun Sen, Court Sub-Inspector.

(2). That your petitioner submits that the prosecution is not only without any reasonable and probable cause, but absolutely malicious and *mala fide*.

(3). That in order to substantiate the defence of your petitioner, it would be most material to examine Mr. J. H. N—., the District Magistrate of Rungpore, who, your petitioner is advised and believes, will be able to give very material evidence bearing upon the circumstances which have led to the prosecution.

(4) That as the said Mr. N. is at Rungpore to-day, but is about to leave the station, and as your petitioner cannot without summons secure his attendance, she prays that he be requested or summoned to appear in Court, and give evidence in Court to-day, and, further, that he be called upon to produce the following documents in Court :—

(*a*) All letters, correspondence, proceedings, reports, and memoranda which have passed between the said Mr. N. and your worship (written by either) regarding the case of Ainuddin *vs.* Pyari Mohun Bose, or this case, between the 6th September and the 21st September, both dates inclusive.

Your petitioner is willing to deposit at once any amount which the Court considers reasonable for the attendance of the said Mr. N.

And your petitioner as in duty bound shall over pray.

KALLIDHAN MOOKERJEE,
Vakil,

DATED RUNGPORE, 14TH OCTOBER, 1886.

Mr. Ghose (continuing)—This, I may say, I shall only ask for, if you think that a sufficient case has been made out against me to put me on my defence. The second petition which I have to present is to the following effect :—

To the Deputy Magistrate of Rungpore.

The humble petition of Srimati Prasannamayi Dasi of Rungpore.

Humbly Sheweth—

That in the case under section 289, Indian Penal Code, in which your petitioner is at present being prosecuted, Mr. E. A. S—his a very impor-

tant witness for the prosecution, and as such he was examined in this Court in the case against Pyari Mohun Bose.

No reason has been assigned why Mr. S—h who killed the deer, has not been cited by the prosecution; and as it is very important for your petitioner to show that the present prosecution is malicious and *mala fide*, and as Mr. S—h's evidence would be very important on this point, your petitioner prays that he be summoned to give his evidence in Court to-day, your petitioner being prepared to deposit any amount which the Court thinks reasonable for his attendance.

And your petitioner as in duty bound, &c.

Mr. Ghose—I am informed that Mr. S—h is within the precincts of this building.

The Magistrate—Yes, let the witnesses for the prosecution be first examined, thon I will consider about Mr. S—h.

Mr. Ghose—I say, Sir, that Mr. S—h is a most important witness in this case. He was the person who killed the deer (laughter); he was the Police officer most concerned in the case, and was examined by you in the case against Pyari Mohun. If he is animated by proper motives, how is it that though he came forward as a witness in the last case, he now refuses—that is the interpretation I am reluctantly forced to put upon his conduct——to come into the witness-box.

The Magistrate—With regard to Mr. N., I may tell you that he will be going away on leave to-day.

The Magistrate—With regard to Mr. N., I may tell you that he will be going away on leave to-day.

Mr. Ghose—It may be that after examining Mr. S—h and getting the answers which I expect to get from him, it will not be necessary for me to examine Mr. N.

The Magistrate—Yes, you may depend that Mr. S—h will be summoned, and on the understanding that he will be examined later, we may proceed with the examination of other witnesses.

An immediate summons was then ordered to be served on Mr. S—h, Mr. Ghose undertaking to inform the Court in time should he require Mr. N.

The trial then proceeded and the witnesses were examined, and cross-examined, and it was shown clearly that the whole prosecution had its origin in Mr. S—h who was the real prosecutor behind the scenes. As soon as the witnesses were cross-examined and the statement of the lady who was allowed to appear through Counsel, was taken, her Counsel applied that Mr. S—h should be the first witness called for the defence, especially as the defence had produced certain

letters from Mr. S—h to the Zemindar, showing that the latter had incurred Mr. S—h's displeasure by his refusal to lend his elephant. The Magistrate thereupon said " There is no necessity for you to go into the defence. I acquit Prasannamayi Dasi." The lady was put to very great expense by reason of this prosecution and after the publication of the proceedings in the newspapers of Calcutta, the Lieutenant-Governor of Bengal (Sir Rivers Thompson) reviewed the case in a Resolution dated 1st March 1887, from which the following extracts are taken :—

* * * * It is no doubt possible that Mr. S-h originally went to the spot and with a rifle, in consequence of the exaggerated account given to him by his informants. But his proceedings after his dispute with the Dewan were entirely uncalled for, and it is quite clear that he should have retired from the scene when he found that the reports regarding the animal were extravagantly wide of the truth, and that the servants of the Babu were in a position to secure it.

5. The proceedings in the next stage were more serious. It appears that Mr. S—h at once reported the circumstances to his superior officer, the District Superintendent, Mr. S., and that the result of their conference was that Mr. S-h sent a constable for the man Ainuddin who had originally reported to him that the deer was doing mischief and told him, that, as injury had been done to him he should complain. Without such instigation, there is no reason to suppose that the man would have moved in the matter. Thereupon, Ainuddin laid a charge at the Police Station against the Dewan, Pyari Mohun Basu, and the police sent the case up for trial. It appears that the matter also came to the notice of Mr. N., the Magistrate and Collector of the District, and that he was cognizant of these proceedings and approvèd of the action of the District and Assistant Superintendents. The question for the Lieutenant-Governor to consider is whether Mr. S. and Mr. S—h acted in good faith, in causing this prosecution to be instituted. They both argue that the fact that some people went to Mr. S—h and asked him to take measures to have an animal which was loose and doing mischief tied up constituted the laying of a charge under section 289 of the Indian Penal Code before a Police Officer, and that the Police were bound to proceed with the charge. This explanation does little credit to those by whom it is advanced. All the proceedings show that the prosecution was a police prosecution, and the police authorities should not have put forward a complaint or to endeavour to invest it with any other appearance. Mr. S—h himself in his evidence on oath said—" I then told the Dewan that I should prosecute him for not taking proper care of a savage anima

in his charge." But it is quite evident that the circumstances did not justify a police prosecution. The animal was not shewn to have been dangerous and the events of the night on which it got loose were not sufficient to make its owner or keeper criminally liable because it succeeded in escaping from its enclosure. Moreover the animal was then dead, and Ainuddin or any of the other persons who had been frightened should certainly have been left to their own remedy. Looking to all the circumstances, the Lieutenant-Governor must hold that Mr. S. and Mr. S—h were actuated by other motives than those of public duty in proceeding with the case. Whether these motives were on Mr. S—h's part, irritation at the action or words of Babu Annada Prasad Sen or his adherents, or at the threat of a civil action, or on Mr. S's part, a desire to support his subordinate cannot be determined. But that a police prosecution was instituted for some other objects than the prosecution of the public interests, is the only inference to be drawn from the facts. Mr. N. appears at least passively to have acquiesced in this abuse of official power.

6. In the course of the trial before the Deputy Magistrate, Babu Chandi Charn Bose, no proof was adduced of habitual fierceness or dangerous character of the deer. The complainant stated generally that it was in the habit of injuring people, but no witness supported this statement and one directly denied it. The Dewan admitted that on one occasion when its keeper had put his arms round the animal's neck it had shaken him off, and in doing so hurt him with its horns, and that its horn had been out down in consequence. The statement was supported by the production of the animal's head in court. This fact itself showed that measures had been taken to prevent the animal from doing harm. At any rate the case for the prosecution entirely failed. Yet, the Deputy Magistrate instead of directly finding this, dismissed the case on the ground that the Dewan was not the person in charge of the deer. This error of judgment laid the basis for the unfortunate proceedings which followed.

7. On its coming to Mr. S's. knowledge that the case had been dismissed on this ground, he directed the Court Sub-Inspector to apply for a summons against Babu Annada Prasad Sen's aunt Srimati Prasannamayi. This was a serious aggravation of the previous impropriety of pressing the prosecution at all, and it brings into strong relief the action of Messrs S. and S—h in instigating Ainuddin to lay his formal complaint in the first instance. It indicates a reckless determination to cause trouble and annoyance to those against whom the police had once directed their exertions. The Deputy Magistrate instead of peremptorily refusing to issue summons referred the case to Mr. N., giving his reasons for thinking that a summons should not be issued. Thereupon Mr. N. recorded the foolish order sanctioning the issue of summons. It is probable, as you observe, that he never looked at the record, but in any case it is clear that he

absolutely failed in his duty as chief controlling authority and executive head of the district. The deer, which was the cause of the offence, was dead; the first prosecution had failed, and an officer in his position with any claim to judgment, would have been glad of the opportunity of staying further proceedings. That he should encourage the continuance of the scandal by allowing action to be taken against a lady, and thus, instead of suppressing it, giving it the sanction and support of his authority makes it manifest that he is wanting in ordinary discretion.

8. The second prosecution as might have been expected failed like the first. One incident occurred, however, in the course of it, which gave Messrs. S. and S—h a further opportunity of showing their inability to realise their responsibility to the public and to the Government. Mr. S—h who had appeared as a witness for the prosecution in the first case, was not put forward as a witness in the second. The reasons given for this are, as you have shown, quite futile, Mr. S—h was cited as a witness for the defence and it was then made evident that the Counsel for the defence wished to have an opportunity of examining him. When it was found that the case would be dismissed without any witness for the defence being called, an attempt was made to induce Mr. S. to allow him to appear as a witness for the prosecution, in order that he might be cross-examined. Mr. S. refused to do so, and the Deputy Magistrate did not exercise his power of calling him as a witness, and Mr. S—h did not offer himself. Mr. S.'s explanations on this as on other points, show an inability to realise the position of a police officer in the matter. It was not a matter of "the fighting out of personal issue between Mr. S—h, and Babu Manomohan Ghose." It was a matter of clearing Mr. S—h, and through him Mr. S. himself, of *animus* in instituting or promoting the prosecution. If no such *animus* existed, the police officers should have been ready to take the opportunity of disproving it. That they declined the opportunity, affords the strongest ground for assuming that they feared the result of the ordeal. Without rejecting Mr. S—h's statement as regards the altercation between him and the Babu's adherents, the Lieutenant-Governor must hold that there was something in those proceedings or in the antecedent or subsequent proceedings which he was unwilling to subject to public scrutiny.

9. The whole case exhibits a course of arbitrary and oppressive action on the part of Messrs. S—h, S. and N,, which the Government cannot tolerate. Such proceedings can only bring the administration into contempt and disrepute and enhance the difficulties of officers who are really anxious to administer their charges with fairness. Babu Chandi Churn Bose displayed a want of judicial accuracy in the first case and of judicial firmness in the second; but beyond this, his conduct does not call for unfavorable comment. Mr. S—h has already been transferred to the Chittagong Hill Tracts. He is an officer of only a year's standing and was acting in a

greater part of these proceedings in a subordinate position. He is a 3rd grade Assistant Superintendent officiating in the 2nd grade. He will be deprived of his officiating promotion for six months, and the Commissioner of Chittagong in communicating to him an expression of the strong displeasure of Government will inform him that his restoration to promotion will be dependent on the nature of the reports received from his Departmental superiors. Mr. S. has already been deprived of his officiating charge as District Superintendent, and transferred to another District in the capacity of Assistant Superintendent. The Inspector-General will convey to him the severe censure of Government, and inform him that he will not be appointed to the charge of a district for at least one year, and until he is reported to have shown a better appreciation of his duty and responsibilities. Mr. N. has applied to resign the service, but having regard to the part he took in the case, and considering that it was to him as the chief officer of the District, that Government had to look for the repression of the irregularities of his subordinates, the Lieutenant-Governor is constrained to mark his dissatisfaction by directing that from the 1st March, Mr. N. shall be reduced to the 2nd grade of Magistrates and Collectors.

It will be seen that the Deputy Magistrate was compelled to issue a summons in the case in order to please his official superior Mr. N., the District Magistrate, whose conduct in the case is so severely censured by the Lieutenant-Governor. Had the Deputy Magistrate been left free to exercise his own judgment such a scandal as this would never have taken place. But the Bengal Civil Service according to its leading organ the *Pioneer*, considered that Mr. N. was very severely dealt with by the Lieutenant-Governor and that paper remarked that nine out of ten members of the Civil Service would consider themselves "very harshly treated" if they were called to account in the same way for doing what Mr. N. had done!

CASE NO. 15

The Jamalpur Mela Case—1887.

Jamalpur is a sub-divisional town in the district of Mymensingh. In 1883 Mr. Nanda Krishna Bose was in magisterial charge (executive and judicial) of the subdivision of Jamalpur, and in that year a public meeting of the inhabitants of the place was held, in which it was

resolved that a *Mela* (exhibition or fair) should be held annually in the town for the encouragement of trade and agriculture and that it should begin in February or March and last for about a month and a half, and that the expenses should be defrayed by public subscription. The first *Mela* or exhibition was held after raising the necessary funds, on a piece of land belonging to the Government called Line Jamalpur, which was placed at the disposal of the *Mela* Committee by the Sub-divisional Officer, with the consent of Mr. R. M. Waller, then Magistrate and Collector of Mymensingh. The *Mela* continued to be held similarly in 1884 and 1885, the surplus proceeds from the public subscription and the profits being deposited in the Postal Savings Bank, in the name of the President of the Committee, who during those years was Mr. Nanda Krishna Bose. Early in 1886 he was transferred from Jamalpur and was succeeded by Babu S. C. D. a Deputy Magistrate who, shortly after his arrival, was elected as Chairman of the *Mela* Committee and the exhibition for 1886 was held as before. About April 1886, certain letters passed between Babu S. C. D. and his official superior Mr. G., then Magistrate and Collector of Mymensingh, as to the desirability of making over the *Mela* and its funds to the Government. The members of the *Mela* Committee apparently disapproved of this suggestion to deprive the public of the management of the *Mela*, and represented the matter by letter to Mr. Nanda Krishna Bose, the founder who was then in another district. Mr. Nanda Krishna Bose's reply was to this effect:—"You should remember that the *Mela* is a public institution, and not Government property There is a committee of management and you have every right to protest against the diversion of the funds to Government." It had been customary on the opening of the *Mela* every year for the Hindus to worship an image of the goddess Kali which used to be kept in a thatched house within the *Mela* grounds. In November 1886, Mr. G., Magistrate of the District, visited Jamalpur and directed his subor

dinate Babu S. C. D., by an order in writing, that the image of the goddess Kali should be removed from the *Mela* ground within six hours, and the goddess was accordingly thrown away by coolies,— a proceeding which naturally gave offence to the Hindu community. On the 28th November 1885, the inhabitants of Jamalpur held a public meeting and resolved that a general meeting should be convened at an early date for the purpose of making arrangements for the *Mela* of the following year, and for the purpose of obtaining from the Government a lease of the *Mela* ground. A letter was accordingly addressed by the chairman of the meeting to Babu S. C. D., containing the substance of the resolution, to which Babu S. C. D. replied that he would convene a meeting, as requested, at an early date. Instead of doing so however, Babu S. C. D. without consulting the committee began making arrangements for holding the *Mela* independently of the committee, whereupon another public meeting of the inhabitants was held on the 19th December, at which it was resolved that a letter be addressed to Babu S. C. D. requesting him to desist from spending the money of the *Mela* fund and from disposing of the furniture and other moveable property belonging to the committee without their sanction. This resolution was also duly communicated to Babu S. C. D. On the 25th December 1887, a further meeting of the *Mela* Committee was held at which it was resolved that Babu S. C. D., having failed to convene a public meeting, and by reason of his time being almost entirely taken up by official duties a non-official and Honorary Magistrate should be appointed president of the *Mela* committee, and that he should take over all the properties belonging to the *Mela* from Babu S. C. D. It was further resolved that in asmuch as Mr. G., the Magistrate and Collector was opposed to any religious worship or amusement of any kind being held on Government land, it would be desirable to hold the *Mela* on some other site not belonging to the Government. The substance of this resolution having

been communicated to Babu S. C. D. by the newly elected president, Babu S. C. D. by way of reply forwarded a copy of the following letter from the Magistrate and Collector:—

"To the Sub-Divisional Officer, Jamalpur.

"Your No. 193, dated 28th December 1886. You will make nothing "over to any one else; the regulation of the *Mela* is to remain in your hands "as Sub-Divisional Officer, assisted by the Committee.

1*st January*, 1887. (Sd.) E. G.,— *Magistrate and Collector.*"

A general meeting of the inhabitants of Jamalpur was again held in February 1887, and it was resolved by those present that in consideration of the approaching Jubilee of Her Majesty the Queen-Empress, the *Mela* should be opened on the 16th February, the date fixed for the celebration of the Jubilee, and that out of the proceeds of the *Mela* a school should be established to be called the Jubilee Vernacular School. In accordance with this resolution a public subscription was raised by the Committee, and it was announced that the *Mela* would be opened on this occasion at a place called Khatiakury in Jamalpur, on the 16th February. Traders and shopkeepers accordingly commenced to arrive from the interior from about the 13th February 1887, with various kinds of goods, and to occupy stalls which had been built for them by the Committee. On the 14th February, Babu S. C. D., who expected to be supported by the District Magistrate, accompanied by a Sub-Inspector of Police and about 20 constables and 8 or 10 chaukidars or rural watchmen; suddenly appeared without any complaint or information of any kind on the *Mela* ground, and ordered the Police to examine the weights of the shop-keepers. Whereupon several persons apprehending ill-treatment ran away; three of them who stayed there were arrested by the Police, but subsequently released and their weights taken from them. Babu S. C. D. intimated that orders would be passed regarding them hereafter. On the 15th February several Police constables again came to the *Mela* ground and commenced to dissuade the shop-keepers and others from attending the *Mela*. About that time Babu S. C. D further instituted

proceedings against several of the supporters of the *Mela* for the purpose of binding them down to keep the peace, but afterwards took no further steps in the matter.

The *Mela*, in spite of the opposition of the Magistrates and the Police, was however opened on the 16th February as announced, and about the same time Babu S. C. D. himself gave out that he would open another *Mela* at Line Jamalpur, on 9th March. The Police during this period were instrumental in harassing the supporters of the public *Mela* opened on the 16th February in various ways, and certain complaints of ill-treatment and wrongful confinement were brought against the Police by some of the shop-keepers who had come to the *Mela*, while on the other hand, the Police preferred certain charges against the *Mela* people, accusing them of having forcibly compelled traders to go to their *Mela*. Babu S. C. D. in his judicial capacity accepted all the complaints by the Police and set them down for hearing, while he was reluctant to take any action on the complaints brought by the shop-keepers. On the 22nd February, the Sub-Inspector of Police reported to Babu S. C. D. through the Inspector that a constable under him had been obstructed in the discharge of his duties on the previous day by two of the men who had preferred charges against the Police. On this report Babu S. C. D. passed the following order: "Police to send up rioters under section 353 Penal Code," and in accordance with this order sent up two of the complainants against them on a charge under that section. On the 25th February, a further complaint was made by a Head-Constable of Police at the Police Station charging the Vice-Chairman of the Municipality, one of the principal supporters of the *Mela*, with having been a member of an unlawful assembly in his own house with the intention of beating the Police, but that the unlawful assembly were unable to carry out their intention, in as much as the constable had taken shelter in the Police Station. While these charges and counter-charges were being preferred, Babu S. C. D. instead of waiting till the 9th March,

suddenly opened his *Mela* at Line Jamalpur about the end of February and attempted, with the assistance of the Police, to induce traders and shop-keepers to stay away from the public *Mela* and to attend his own. Early in March several of the complainants and accused persons connected with the public *Mela* applied to the Magistrate of the District to transfer all the cases then pending before Babu S. C. D. to some other Magistrate, on the ground that Babu S. C. D. was personally interested in their result. Mr. G. felt bound to accede to this prayer and he transferred all the cases then pending to the Court of another subordinate of his—a Deputy Magistrate, Babu A. K. B. in the town of Maimensingh. However, the day before the order of the District Magistrate to transfer the cases, reached Babu S. C. D., he himself instituted certain cases against some of the men and charged the mukhtear or legal practitioner, who had objected to his trying the cases, with perjury in having made, as he alleged, a false statement in a petition filed by him on behalf of some of the supporters of the public *Mela*. After the transfer of the cases to the Court of Babu A. K. B. he, before he had been spoken to by the District Magistrate, discharged four of the accused persons sent up by the Police on the 14th March. On the 15th, however, that is the next day, Mr. G., the District Magistrate, sent for Babu A. K. B. while he was trying some of these cases and had half-an-hour's conversation with him. Babu A. K. B.'s attitude towards the public *Mela* people changed considerably after this interview with his official superior and he convicted three of the defendants as being members of an unlawful assembly and sentenced them to pay a fine of Rs. 20, the sentence being unappealable. Two persons who had been charged by the Police with obstructing them, the same Deputy Magistrate sentenced to 31 days' rigorous imprisonment, declining to summon Babu S. C. D. who had been cited as an important witness by the defence. These two persons appealed to the Sessions Judge who acquitted them both disbelieving the evidence adduced against them.

The Sessions Judge concluded his judgment thus :—

"In conclusion, I think that the reasonable and proper construction to "be put upon the case is that the Police used undue pressure to prevent "people from attending the *Mela*, and that any conflict that may have arisen "between the Police and the others, was the consequence of the unwarrant- "able and forcible interference of the former. This is the probable interpre- "tation as shewn by the evidence for the defence, and specially of the "respectable witness, Gobind Prosad Neogy, whose testimony appears en- "titled to full credit."

With respect to a case brought against two other persons belonging to the public *Mela*, of wrongful restraint, Babu A. K. B. refused to acquit the accused although by law he was bound to do so when the complainant did not appear and gave no evidence. In consequence of Babu A. K. B.'s determination to proceed with the case the Sessions Judge was appealed to, to interfere, and he at first hesitated to believe that any Magistrate could proceed contrary to the express provision of the law and suggested that a fresh application should be made to Babu A. K. B. on the subject.

The second application to Babu A. K. B. having been ineffectual, the Sessions Judge passed an order to the effect that the Deputy Magistrate's action was contrary to law and that he should stay proceedings pending a reference to the High Court on the subject, the Sessions Judge being by law unable to give any relief himself. On receipt of this order Babu A. K. B. abruptly acquitted the accused. In another case originally brought by the Police Babu S. C. D., in which three persons were accused of using fraudulent weights, Babu A. K. B. sentenced two of the accused each to 9 months' rigorous imprisonment.

On appeal the Sessions Judge in May acquitted both prisoners on the evidence remarking that the Sub-Inspector had acted unfairly in making a raid on the shop-keepers in the public *Mela* while leaving the shop-keepers of the rival *Mela* "unmolested." As regards the cases brought against the Police, Babu A. K. B. dismissed them all. Meanwhile Babu S. C. D., the Deputy Magistrate in charge of Jamalpur,

wrote a letter to Mr. G. asking for permission to prosecute two persons on a charge of perjury for having made certain allegations which Babu S. C. D. characterised as false, in a petition filed before him objecting to be tried by him. Mr. G. thereupon passed this order:—"The prosecution is sanctioned under section 193, or any other section that may appear necessary. Made over to Moulvi Mahomed, Deputy Magistrate, for trial." On the same day Moulvi Mahomed, another subordinate of Mr. G., equally afraid of incurring the displeasure of Mr. G., without recording any evidence whatever at once, on the receipt of Mr. G.'s sanction issued warrants for the arrest of the two men concerned. An application was thereupon made to the High Court at Calcutta setting out all the facts in detail, and praying that all the convictions referred to above might be quashed, and that the proceedings in the so-called perjury case should also be quashed on the ground that the whole of the proceedings of the Magistracy of Maimensing were *mala fide* and perverse. The High Court consisting of the Chief Justice and Mr. Justice Chunder Madhub Ghose quashed all the convictions and proceedings of the different Magistrates concerned as illegal and improper. In the result while all the prosecutions instituted by the Police and the Magistracy ended in the acquittal or discharge of the accused, nothing could be done as regards the complaint preferred by the public *Mela* people which had been summarily rejected or dismissed, and whose grievances therefore remained unredressed so far as the criminal courts are concerned.

The whole of the proceedings were subsequently reviewed by Sir Steuart Bayley, then Lieutenant-Governor of Bengal, who in an elaborate Resolution, dated 31st August 1887, after pointing out in detail some of the facts narrated above, passed orders not only inflicting punishment on the different Magistrates concerned, but also censured the Commissioner of the Division for having neglected to interpose his authority in order to prevent what was, in the Lieutenant-Governor's

opinion, a grave scandal. Sir Steuart Bayley felt it to be his duty to examine the facts of the case minutely and came to the conclusion that the action of the local magisterial authorities was wholly unjustified. The following four paragraphs are extracted from the Lieutenant-Governor's Resolution and special attention is drawn to the remarks contained in paragraph X. The more important passages have been printed in italic type :—

VI. The Lieutenant-Governor has dealt at some length on these matters, because he considers action like that taken by Mr. G. to be mischievous. It is manifestly impossible to expect native gentlemen to cooperate with a Government officer in voluntary works of public utility if they know that they are liable to be overridden and thrust aside as the *Mela* Committee has been in the present case, and the effects of such injudicious action as that under comment extends far beyond the particular case concerned, for it tends to create a breach between the most active members of the local public and Goverenment officials, which cannot fail greatly to limit the influence and capacity for usefulness of the latter class.

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X. In the opinion of the Lieutenant-Governor *these proceedings involved a grave misuse of judicial authority.* Sir Steuart Bayley does not see the slightest reason to suppose that there would have been a breach of the peace if the Police had not interfered and by their action brought on a semblance of disturbance which was made the excuse for a harassing series of criminal cases, all of which can be traced to the fact that the Magistrate of the District disapproved of the way in which a *Mela* was being managed by an independent Committee and superseded them without authority. *The whole case is a striking illustration of the danger and inconvenience of the union of executive and judicial functions in the same officer* when that officer happens to be indiscreet and intolerant, but as this union is for the present essential, the practical lesson to be drawn from it is the necessity for extreme vigilance on the part of controlling and supervising officers and the magnitude of the evils attendant on failure in this respect. *It is clear to the Lieutenant-Governor that years of patient and careful working on proper lines can scarcely undo the mischief and remove the prejudice against the existing system produced by a single case like the present,* where the indiscreet and improper proceedings of the local officers are left unchecked by the Commissioner, whose special duty it is to supervise their action.

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XII. On a review of all these unfortunate proceedings it is impossible to acquit the District Officer, Mr. G., who must be held mainly responsible

for them, of grave errors of judgment, of want of temper and arbitrary conduct. The same remarks apply, though in a less degree, to the Sub-Divisional Officer, while the failure of Mr. L. adequately to grasp the responsibilities of his position as Commissioner is disappointing. The Lieutenant-Governor sees nothing to find fault with in the conduct of the Sub-Divisional Officer at the outset. His report to the Magistrate of the 4th November shews that he clearly understood the character of the *Mela* and the position of the Committee, and he then gave sound and judicious advice to the Magistrate which, if followed, would have prevented all the mischief which has occurred. The Magistrate having rejected his recommendation in his ill-considered order of the 18th December, the Deputy Magistrate did not offer any advice when forwarding the proceedings of the *Mela* Committee meeting on the 25th December, after he had received the order to carry on the *Mela* himself as Sub-Divisional Officer with the assistance of a Committee who were overridden by that very order. He seems to have identified himself completely with Mr. G.'s policy, and to have fought the Committee with all available weapons. His conduct from this time, was a long series of blunders and perverse acts, while much of his reports to Mr. G. amounted to distortion of the actual facts. He had an opportunity of retreating from his false position by acting on the suggestion made by Mr. G. in reply to his letter of 5th January, but failed to avail himself of it. It is obvious however that he believed himself throughout to be acting in harmony with the Magistrate's views, and there was only too much to satisfy such a belief on his part. His Honor is satisfied of the Babu's unfitness for the place he occupies, and an arrangement will be made for his early removal.

XIII. The task of reviewing Mr. G's action throughout this case is a difficult and unpleasant one. He is an experienced officer who has hitherto borne a fair reputation, and the Lieutenant-Governor has anxiously tried to take the most favourable view of his conduct which the facts will allow. He is however compelled to remark that some points have left a painful impression on his mind. Among these are Mr. G.'s silence on the subject of removal of the image and hut of *Kali* till attention had been called to it in the press, although the matter was more than once referred to in papers which came before him. His remark that the Sub-Divisional Officer was to be assisted by the Committee in carrying on the *Mela*, the order being passed on the proceedings of a body claiming to be the Committee which had removed the Sub-Divisional Officer from the post of Chairman; the misleading remark on the report to the Commissioner on the 7th March that there had been a local dispute about some rival fairs at Jamalpur, and the ambiguous orders given to the Sub-Divisional Officer regarding the *Mela* started on the new site. Assuming that these omissions and ambiguities were the results of heedlessness, there still remains

the fact that nothing but Mr. G.'s indiscreet interference with the committee's method of celebrating the *Mela* led to the decision to have an unofficial Chairman, and to sever themselves from the Deputy Magistrate's management. Mr. G. next refused to accept this decision or even to enquire into the representation made to him, and insisted on the Deputy Magistrate continuing to manage the *Mela* and retain the funds and property of the institution, with which, save in the matter of withholding the use of the Government land, he had no longer any claim to be consulted. Then when the rival *Mela* was started, and the Police, acting under the supervision if not at the instigation of the Deputy Magistrate, began a series of arbitrary arrests to obstruct it, the District Magistrate, instead of at once putting a stop to the prosecution and staying the arbitrary proceedings of his subordinate, allowed the case to proceed, passed the weak and injudicious order to the Deputy Magistrate about proceedings under section 144 of the Criminal Pocedure Code, arbitrarily dismissed the Government Pleader and suspended the Sub-Inspector of Schools almost avowedly for the part they had taken in support of the rival *Mela*, sanctioned what he ought clearly to have seen was an unjustifiable prosecution by the Deputy Magistrate under section 193, Indian Penal Code, and so through his mismanagement and remissness, caused what before was a trivial and unjustifiable exhibition of local feeling, to grow into a grave public scandal rendering necessary the intervention of the High Court to prevent further injustice. Sir Steuart Bayley has anxiously considered whether he is justified in allowing Mr. G. to continue in the first grade of Magistrates and Collectors. He has decided, though with much doubt, that the general good service rendered in the past by Mr. G., may now be counted in his favour, and that the Government may be spared the pain of degrading him, especially as after the present case he must forego all hope of further promotion. But His Honor considers that it is no longer safe to entrust to him a District so important and difficult to manage as Maimensingh and arrangements must be made as soon as possible for his removal to a lighter charge.

As regards the proceedings of Babu A. K. B., the Lieutenant-Governor in a separate Resolution passed the following orders :—

3. As regards the prosecutions for using false weights, it is to be feared that the severe sentences were inflicted with the object of punishing men who in the matter of the *Mela* had taken up an attitude of hostility to the Sub-Divisional Officer of Jamalpur; but even putting the most charitable construction on the motives of the Deputy Magistrate, Sir Steuart Bayley cannot but come to the conclusion that the gross carelessness and want of

judgment in this and the other cases cannot be adequately punished by the most severe reprimand.

4. His Honor therefore directs that Babu A. K. B. be degraded to the bottom of 6th grade of the Subordinate Executive Service, and that he be deprived of his first class powers. He will remain at the bottom of the 6th grade, until satisfactory reports are received from his superior officers regarding his work and industry. On the receipt of such reports, the Lieutenant-Governor will then consider the question of restoring to him first class powers, and moving him to the top of the sixth grade in order that he may become eligible for promotion to the fifth grade. The Deputy Magistrate will also be transferred to the head-quarters of the District of Dinagepur.

It may be mentioned here that Mr. G., the Magistrate referred to in the case, was a senior officer of many years' standing and that the Resolution from which extracts are given above created a great sensation among the members of the Executive Branch of the Bengal Civil Service, who as a body strongly disapproved of the vigorous action which Sir Steuart Bayley had been forced to take against a member of their own service. Accordingly an agitation was set on foot by some members of the Bengal Civil Service against the action of Sir Steuart Bayley, and Mr. G. was induced to prefer an appeal to the Government of India against the orders of the Lieutenant-Governor. The Government of India was led to modify only that portion of Sir Steuart Bayley's order which directed that Mr. G. should forego all further promotion as in the opinion of the Government of India, such a direction as regards the future ought not to have been made. The grievance of the Executive Branch of the Civil Service in connexion with this case appeared to be that by his action Sir Steuart Bayley had publicly exposed the proceedings of a District Officer and many of them felt, and urged in the columns of the public press, that if the Government were to take such action as Sir Steuart Bayley had done, the prestige of District Magistrates as a body would be lowered. As regards the proceedings of the Subordinate Deputy Magistrates, the general feeling in Bengal was that few Deputy Magistrates, if placed in the position in which Babus S. C. D

and A. K. B. had been placed, could have had the courage to act differently.

CASE NO. 16

The Contai Case—1889

In this case Bikanta Nath Hazra, a Pleader practising in the Munsiff's Court in the Sub-division of Contai in the District of Midnapur, had bought a plot of land near the Sub-divisional Court-house at Contai for Rs. 1,150, and after his purchase he had taken possession of the land as well as of the building and tank situated thereon. Subsequently a claim was asserted by the Sub-divisional Magistrate on behalf of the Collector of Midnapur, who represented the Government, that the tank in question was partly situated on Government land. In order, however, to avoid all litigation Bikanta Nath Hazra in October, 1886, applied to the Sub-divisional Officer of Contai to put an end to all dispute by settling at a reasonable rent that portion of the tank to which the Government had asserted a claim. Bikanta Nath Hazra after taking possession of the tank spent about Rs. 400 in excavating it with the knowledge of the Sub-divisional Officer. Certain personal differences having arisen between the Sub-divisional Officer and Bikanta Nath Hazra, the former reported to the Collector and Magistrate of Midnapur, Mr. V., that he disapproved of a portion of the tank being settled with Bikanta Nath Hazra. In April 1889, Mr. V., the Collector of Midnapur, on the suggestion of the Sub-divisional Officer objected to make the settlement of the tank with Bikanta Nath Hazra, whereupon the latter presented certain petitions to the Collector of Midnapur, urging that although the claim of the Government was based upon certain errors in a certain measurement paper, he was willing, in order to avoid all litigation, to take a settlement of the disputed tank at a reasonable rent. To these petitions Bikanta Nath Hazra received no reply until the 13th May, when Babu B. K. B. then

Sub-divisional Officer of Contai wrote to Bikanta Nath Hazra to say that the tank was to be kept *Khas* (in the possession of the owner) for the present, under the orders of the Collector, and it could not be settled with Bikanta Nath Hazra; the letter ended with these words: "Please therefore do not interfere with the tank in any way." Bikanta Nath Hazra believing that the Collector of Midnapur had no authority to oust him from any portion of the said tank without a decree of the Civil Court continued to remain in possession of the tank. On the 21st May proceedings were instituted in the Court of the Second Deputy Magistrate of Contai under section 145 of the Criminal Procedure Code, so that the Magistrate might be in a position to decide summarily who was in actual possession of the tank. After the issue of the summons in this section 145 case, it struck the magisterial authorities that such a case must necessarily result in Bikanta Nath Hazra being maintained in possession of the tank and accordingly the proceedings were dropped. On the 23rd May, however, an order was issued by Babu B. K. B., Sub-divisional Officer of Contai, who purported to act as a judicial officer, calling upon Bikanta Nath Hazra to show cause within seven days why he should not be prosecuted under the Penal Code for having disobeyed the order contained in his letter of the 13th May, namely, "Please therefore do not interfere with the tank in any way." Bikanta Nath Hazra accordingly showed cause and contended that the order in question was not lawful and not one which he was bound to obey, and that therefore he had committed no offence under section 188 of the Penal Code on the admitted facts of the case. In as much as the Magistrate of the District had sanctioned and approved of this criminal prosecution, Babu B. K. B. refused to drop the case and passed the following order on the 15th June:—"Prosecute Bikanta Nath Hazra under section 188 Penal Code. Case made over to Babu S. P. Sircar (another Deputy Magistrate), for trial." At the time of passing this order in reply to a remark of Bikanta Nath Hazra's Pleader, that such a

prosecution would be vexatious and serve no useful purpose, the Deputy Magistrate remarked in open court:—"You do not see my peculiar position in the matter," undoubtedly referring to the prosecution having been inspired by the Magistrate and Collector of the District, Mr. V. The case was taken up on the 15th June by Babu S. P. Sircar, who fixed it for the 25th of that month, but subsequently intimated to Bikanta Nath Hazra that he should try to move the High Court and relieve him from the unpleasant task of trying such a case and gave him time for that purpose until the 10th July. Bikanta Nath Hazra thereupon moved the High Court on the ground that the prosecution was not *bonâ fide* and that its only object was, by harassing him, to compel him to abandon possession of the tank. On the application of Bikanta Nath Hazra, the High Court issued a rule, and on the 29th July, after reading the explanations submitted by Mr. V. made the rule absolute setting aside all the proceedings, at the same time remarking: "We do not think this prosecution was rightly instituted."

Case of this description though petty in character, are by no means uncommon, but in the vast majority of such cases the aggrieved person would rather submit to the dictates of the Magistrate of the District than bear the expense and trouble of moving the High Court at the risk of incurring the displeasure of the local authorities.

CASE NO. 17

The Serajgunge Case—1891

Two Zemindars in the sub-district of Serajgunge, named Chandra Kishore Munshi and Dinendra Nath Sanyal, had some altercations regarding their respective shares in the rents of cerain lands in the Serajgunge Sub-division of the District of Pubna. Dinendra Nath Sanyal claimed a portion of the rents which the tenants were paying to Chandra Kishore Munshi and managed to enlist on his behalf the sympathies of Mr. B., the Collector and Magistrate of the

Sub-division of Serajgunge. Mr. B. summoned Chandra Kishore Munshi to his private residence on Sunday morning, 7th June 1891, and told him that he would not be allowed to depart until he had made up his dispute with Dinendra Nath Sanyal, who was also present on the occasion, and until he had signed an agreement to that effect, adding that in case of refusal Chandra Kishore Munshi should be at once arrested and sent to the lock-up on a charge of hiring club men. Chandra Kishore Munshi was then detained without food for some hours and, seeing no means of escape from the prosecution with which he was threatened, he intimated in the afternoon his readiness to obey the Collector's orders. Mr. B. then wrote out the desired agreement which both parties signed in the presence of two police officers, who were called to witness the execution of the deed. Some days later Chandra Kishore Munshi on being requested to appear before the Registrar of Deeds, and acknowledge his signature to the agreement, refused to do so on the ground that the signature had been obtained by coercion. Thereupon Dinendra Nath Sanyal brought a civil suit to enforce the registration of the agreement and eventually obtained a decision in his favour from the Subordinate Judge of the District. From that decision Chandra Kishore Munshi appealed to the High Court at Calcutta on the ground, that the deed having been extorted from him by Mr. B. by coercion, he was not bound by law to register. The High Court, consisting of Mr. Justice Norris and Mr. Justice Banerjee, on the 17th August 1894, when the appeal came on for hearing, reversed the decision of the Subordinate Judge and made the following remarks:—

"There cannot, we think, be a shade of doubt that the defendant's signature to the agreement was obtained by duress and intimidation. Mr. B.'s evidence is conclusive on the point. We are of opinion that the defendant's signing of the agreement under the circumstances was not an execution thereof within the meaning of the Act; indeed it was no execution at all. Execution must mean voluntary execution, that is, the signing of the document of the executant's free will. It could not possibly be contended that, if Mr. B. had forced a pen into the defendant's hand, held it there, and by

force guided the hand to write the signature, such a signing was an execution in law; and there is no difference between the two cases. We think, therefore, that the appeal must be allowed. We cannot conclude this judgment without expressing our unqualified disapproval of the conduct of Mr. B. in this matter, as disclosed in his own evidence; his novel but apparently illegal method of replenishing the Lady Dufferin Fund is not before us, and we say nothing about it. A copy of this judgment will be forwarded to the Local Government."

As stated above, the Judges forwarded the papers of the case to the Lieutenant-Governor of Bengal for such notice as the Government might be induced to take regarding the unwarrantable conduct of Mr. B., but Sir Charles Elliott, then Lieutenant-Governor, unlike his predecessors in that office, refused to take any action and declared in the Bengal Council in answer to a question that he had sent a copy of the judgment to Mr. B., but after a careful consideration of the whole case he had come to the conclusion that it was not necessary for him to interfere further in the matter. The facts of the case were all admitted by Mr. B. himself in his evidence given before the Subordinate Judge of Pubna, and it was perfectly clear that Mr. B. threatened to make improper use of his judicial powers in order to force Chandra Kishore Munshi to execute the deed, and also to extort from him, as admitted by Mr. B. himself, a large sum of money as a subscription to the Lady Dufferin Fund. The evidence of Mr. B. upon this point was in these words:—"Both sides promised in writing to pay a subscription of Rs. 1,000 each to the Lady Dufferin Fund if they would leave Serajgunge without my permission. In my previous deposition I said:—"I took recognisance bonds from Dinendra Nath Sanyal and Chandra Kishore Munshi for Rs. 1,000 each to be forfeited to the Lady Dufferin Fund."

Supporters of the present system of combining executive and judicial authority in the District Magistrate naturally apprehend that such a hold as Mr. B. possessed over the Zemindars of his district would be weakened by a separation of the two functions, and herein lies the secret of their

strenuous opposition to the proposed separation. This case further illustrates what is really meant by those who insist upon the prestige of the District Magistrate being upheld by investing him with judicial powers.

CASE NO. 18

The Sararchar Case—1892

The proceedings in this case were published in pamphlet form by Mr. H. N. Morison, barrister-at-law in Calcutta, in May 1893, under the title of "Official prestige *versus* the Liberty of the subject:—A case illustrative of the danger of investing District Magistrates in India with judicial powers." The facts as summarised from the evidence were as follows:—One Sarat Chandra Ray was a landholder in the village of Sararchar in the district of Maimensing; he had been once a wealthy landlord but was in reduced circumstances at the time of the occurrence. In January 1892, Mr. P., the District Magistrate of Maimensing, went out on tour in the interior of the District. One morning about 2 o'clock, a bullock cart containing various articles belonging to Mr. P. arrived at the Sararchar Bazar, in charge of a cartman. The cart was left in the middle of the road and the man in charge was apparently asleep; about an hour after Sarat Chandra Ray, accompanied by some men came to the Bazar while under the influence of liquor, and happening in the dark to stumble against the cart fell down. Enraged at this Sarat Chandra Ray struck the cartman with a cane and asked him why he had kept the cart in the road. The man replied that the cart belonged to the Magistrate of the District; the drunken man thereupon made use of some contemptuous epithets with reference to the District Magistrate, and went to the house of a woman named Shyama, where he misbehaved himself by breaking the mat wall of her house and assaulting her; in the morning, however, he himself caused the mat wall to be restored. His companions, however, did nothing during the

night and his servant, one Peer Mohamed, merely carried a lantern. The woman Shyama did not at first, think it worth while to prefer any complaint against Sarat Chandra Ray.

The next morning Mr. P. arrived and was informed of the occurrence during the night, and especially of the fact that Sarat Chandra Ray had spoken contemptuously of the District Magistrate. At the same time it was reported by one of his servants that a tin box which had been tied to a table on the cart was missing. The possibility of the box having fallen off an open cart while in motion when the men were probably asleep, did not suggest itself to Mr. P. in his then excited state of mind. On hearing of the occurrence he at once proceeded to record the depositions of his servants and immediately issued a warrant for the arrest of Sarat Chandra Ray and his unknown companions, on charges of rioting, hurt, and theft. He also directed that the woman Shyama who had made no complaint, should be sent up to him. The evidence, however, did not in the least justify the arrest of Sarat Chandra Ray's companions or of the man who happened to carry the lantern. Instead of preferring any complaint himself and appearing as the prosecutor before the Police officer, Mr. P. proceeded to vindicate his dignity and prestige, which he imagined had been set at defiance by the drunken man, by himself issuing the warrants of arrest. Not content with issuing the warrants Mr. P. without a particle of evidence, issued a second warrant directing the Police to enter the house of Sarat Chandra Ray and search his premises "using reasonable force if necessary," and he further declared that Sarat Chandra Ray's house was used for receiving stolen goods. The house was searched by the Police, but nothing was found. On the next day, namely, 29th January, one Nazu Sheikh brought to Mr. P. his tin box with all its contents (two or three books, some stationery, &c.), and stated that a chaukidar or rural watchman named Umed Ali had picked it up very early in the morning of the previous day on the road, where it might

have fallen off the cart at night. On finding his box Mr. P. evidently wavered in his mind as to whether the charge of theft against Sarat Chandra Ray could be maintained and accordingly he proceeded to give the following direction:— "As to the theft of the box I do not think there is sufficient evidence to submit *A* form,* the case must be fully investigated. The Police have got the clue. Umed Ali, chaukidar, left the box at the house of Nazu Sheikh. The chaukidar has not been produced." Later in the day the chaukidar appeared before Mr. P. and gave his deposition, to the effect that he had picked up the tin box on the road, and he was corroborated by the *Panchyet* or head man of the village. Mr. P. without any grounds professed to disbelieve the chaukidar's evidence and directed the Police to enquire if he could not be made an accused, remarking that his case would fall under section 414 of the Penal Code, namely, assisting in concealing stolen goods. At 3 P. M. on the 27th January, the Police recorded two complaints one by the cartman and the other by the woman Shyama, who in the meantime had been induced by the Police to come forward and complain. The Indian Procedure Code requires that the Police should proceed to investigate a case after the receipt of a complaint called the First information. In this case however, the Police had been directed to make the investigation by the real complainant Mr. P., the day before any formal complaints were lodged, but before the Police had recorded any formal complaint Mr. P. gave them this direction: "Police to submit *A* form,* sections 147 (rioting), 379 (theft), 457 (house-breaking by night), 457 (house-breaking by night after preparation to cause hurt). Sarat Babu and Govind Singh to be shewn as absconders." The Head Constable of Police to whom the search warrant had been directed by Mr. P. on the 26th January, lost no time in reporting on the same day that he was unable to find Sarat Ray in his house and on the next day

* An *A* form is a form sent by the Police when the case is said to be in their opinion proved.

the 27th, Mr. P. issued a proclamation calling upon Sarat Ray to appear within 31 days, and in the same breath he directed that his house and all movable property in it should be attached. The result of this extraordinary proceeding was that on the evening of the 27th January, a large Police force went to Sarat Ray's family residence and took possession of all articles including those for domestic use such as bedding, &c., and the wearing apparel of the ladies of the family as well as the jewellery on their persons. Tho report of the Sub-Inspector of Police, who made the attachment, showed that 181 articles were removed from the house to the Police Station, a distance of four miles, and that the only properties not removed were of an immovable character, even the cows were taken away to the pound. Similar action was taken with regard to the articles found in the house of Govind Singh, then supposed to have been an accomplice of Sarat Ray. From the various orders passed by Mr. P. in connexion with the case, it was evident that the Police were acting entirely under his directions. Umed Ali, chaukidar, was at once arrested and sent up in custody charged as suggested by Mr. P. under section 414 of the Penal Code, the servant who had carried the lantern was also, under Mr. P.'s orders, taken into custody and sent up by the Police, although he was accused of doing nothing more than merely carrying the lantern. Having got the Police to submit A forms for offences which were all unbailable (except rioting and hurt) in the two cases ostensibly instituted by the cartman and the woman Shyama, and having got them also to remove every household article from the premises of Sarat Ray, Mr. P. now proceeded to choose his own tribunal for the final disposal of the two cases. Ordinarily they would have been triable by a Bengali gentleman, the Sub-divisional Magistrate of Kisoregunge, within whose jurisdiction Sararchar lay. He happened, however, to be a Magistrate of the first class and though fully competent to try the charges, an appeal from his decision would by law lie not before Mr. P. but before the

Sessions Judge. Mr. P. would not trust that magistrate or any other magistrate with first class powers, but without assigning any reason whatever as required by law and in the exercise of his powers as District Magistrate ordered, on the 1st February, that "the cases will be tried by Mr. H." then an Assistant Magistrate exercising only second class powers and the before subject to the appellate authority of Mr. P. himself. The result of this order was that the case was removed from Kisoregunge Sub-divisional Court to a distance of about 40 miles, and this order was deliberately passed although Mr. P. knew that one of the charges which he had himself made against the men was for an offence under section 458 of the Penal Code, which was unbailable and could not legally be tried by Mr. H. or by any second class magistrate.

On the 5th February, one of the alleged companions of Sarat Ray appeared before Mr. H. and prayed that a month's time might be given to enable the accused person to move the High Court in Calcutta to transfer the case to another district. As under the law Mr. H. could not refuse this application, he adjourned the hearing of the case to the 4th March. Sarat Chandra Ray evidently was afraid to appear before Mr. P. or his subordinate Mr. H. until he felt sure he would be allowed an opportunity of moving for a transfer of the case to a district where the magistrates would not be under the influence of Mr. P., and accordingly he appeared before Mr. H. on the 8th February, two days after he learned that he had got that opportunity. On his appearance Mr. H. ordered the release of the attached properties, which were returned to him on the 16th February. Sarat Chandra Ray engaged a Pleader to defend him who happened to be the Vice-Chairman of the District Board under Mr. P. who was the Chairman, and this Pleader advised him to abandon his intention of moving the High Court for a transfer. On the 4th March, however, Sarat Chandra Ray objected to Mr. H. trying the case on the ground that the charge under section 451 was by law not triable by him. The case was therefore

adjourned to the 8th March and submitted by Mr. H. to Mr. P. for orders. On the morning of the 8th March, Sarat Ray's Pleader had a private interview with Mr. P. What passed at this interview was not disclosed on the record, which only shows that the Pleader agreed to waive the objection to the jurisdiction of Mr. H. and gave Mr. P. to understand that he had advised his clients "to throw themselves on the mercy of the Court." Mr. P. now found that there was no chance of the case going to the High Court, and after Mr. H. had gone through the form of recording the depositions of the witnesses for the prosecution, Mr. P. sent a note to his subordinate Mr. H., in which he stated, "I have no objection to the Assistant Magistrate giving consideration to such plea (accused to throw themselves on the mercy of the Court) and dealing with the case leniently; of course if they do not care to do so the case will be tried out. Babu Ishan Chandra Chakravarti, the Pleader, tells me he has instructed his client to this effect, and I have told him I will record what I have said to him, and write to the Assistant Magistrate to place it on the record." On the same day Sarat Ray under the advice of his Pleader, made a statement in which he admitted that he had given one cut to the cartman, but went on to say that he did not beat any woman and that coming in contact with the bullock cart he had, being drunk, fallen down, adding, "I did not run away but went to make arrangements for my brother who was sick." This statement was described by Mr. H. as "a confession" and Sarat Ray was sentenced to a fine of Rs. 120, Mr. H. rightly remarking "that the disturbance was more a drunken freak than anything else." There being no evidence against Umed Ali, chaukidar, the man who had picked up the tin box and had the honesty to return it to Mr. P., he was discharged after having been detained in custody from the evening of the 27th January to the 5th February Similarly the man who carried the lantern was also discharged having remained in prison for the same period.

Perhaps a "drunken freak" like the one in which Sarat

Chandra Ray had indulged on the night of the 25th January deserved some notice, but it is clear from the beginning Mr. P. must have known that the man had been guilty of nothing more than a "drunken freak ;" and it is open to considerable doubt whether if Sarat Chandra Ray had not had the misfortune to stumble over a cart belonging to the District Magistrate, the ladies of his family would have been subjected to all the indignity and harassment to which they were forced to submit.

CASE NO. 19

The Maimensing Case—1892

Raja Surya Kant Acharya Bahadur, one of the wealthiest landholders in Bengal, was in 1887 on account of his public charity, invested by the Government with the title of Raja Bahadur. Among his numerous public donations may be mentioned a sum of Rs. 1,12,500 (one lakh twelve thousand five hundred) almost equal to £10,000 to the Municipality of Maimensing for the introduction of water-works into the town. In February 1891, Mr. P. of the Bengal Civil Service, took charge of the office of District Magistrate and Collector of Maimensing and soon discovered the great influence which the Raja by reason of his wealth and position exercised in the district. In a short time the Raja happened to incur the displeasure of Mr. P. who began to prefer a variety of complaints against him to the higher executive authorities. In November 1891, Mr. P. suggested that the Raja's name should be removed from the list of members of the Maimensing District Board, on the ground that he had absented himself from six or more consecutive meetings. The Lieutenant-Governor however declined to accede to this recommendation on the ground that "the Raja is the chief landowner of the district and has contributed largely to the improvement of the town, and it is desirable that he be retained on the Board, and as long as he wishes to continue to be a member, the Lieutenant-Governor would not derprive him of his membership."

As regards the municipal administration of Maimensing, Mr. P. soon after his arrival expressed his dissatisfaction with the manner in which the Local Municipalities managed their affairs and complained of the Raja's influence over the Municipal Commissioners in Muktagacha his native village, as well as over the Municipal Commissioners in the town of Maimensing. About the year 1886, the Raja had begun to build a palace on a plot of land in the town of Maimensing. Immediately to the east of this plot were the houses or huts of some four or five tenants of his, separated by a footpath, which existed chiefly for the use of those tenants. The Raja induced these tenants to remove from the locality on receipt of compensation, and a few years later obtained the permission of the Local Municipality, who had claimed the footpath as their property under the Municipal Act, to include the site in his premises, when the footpath or bye-lane should no longer be required by the tenants. After the removal of the tenants the Municipality allowed the Raja to take possession of the bye-lane on his making over to them without compensation two other strips of land which they wanted for public purposes. In August 1891, while the Raja's engineer was building an enclosure wall round the grounds, the Municipal overseer complained of what he then imagined was a slight encroachment by the wall, and of some accumulation of rain-water in the drain at the foot of the wall. This led to a deputation of two Commissioners, one a Deputy Magistrate, the other a District Engineer, to wait upon the Raja, who did not think there had been any encroachment, and after remarking that he would do nothing under compulsion agreed to remove all possible grounds of complaint by building at his own cost a masonry drain outside the wall, or, in other words, to help the Municipality to improve their own roadside drains round his palace, so that the rain-water might not stagnate anywhere or be absorbed in the soil. Owing to this offer the Municipal Com-

missioners took no further notice of the supposed encroachment and pending the construction of the masonry drain, the Raja's Manager caused a suitable ditch to be dug in order to let off any water that might have accumulated there. This ditch however was subsequently closed by the Municipality, apparently without any reason. From the middle of November 1891, to the end of April 1892, the Raja was absent from Maimensing on shooting excursions, but before leaving he had left instructions with his agents to construct the drain before the ensuing rainy season. About the end of April, 1892, Mr. P., the District Magistrate, happened to visit the locality and finding, as he alleged, some rain-water accumulating in the Municipal drain outside the Raja's wall after a heavy shower, learned on enquiry of the complaint regarding the alleged encroachment and also of the offer made by the Raja to construct a masonry drain round his palace. On finding however that the promised masonry drain had not been constructed, Mr. P., on the 30th April, called for all the papers of the Municipality to consider what he should do. The Raja returned to Maimensing early in May and immediately wrote to the Municipality requesting their permission to begin the work, which permission however was withheld by the Municipal Commissioners on the ground that Mr. P. was then considering the matter. The Raja thereupon wrote to Mr. P. in order to avoid further delay, but was informed in reply that fitting orders would be passed. On the 18th May Mr. P. recorded an elaborate proceeding or complaint in his capacity as District Magistrate, instituted a criminal prosecution against the Raja, and made over this proceeding to Mr. H., his Assistant Magistrate, for trial. In this complaint Mr. P. accused the Raja of having committed the offences of public nuisance and mischief and under other sections of the Penal Code, and ordered the Raja to be tried under these sections "or any other law which might be applicable." The prosecution had reference to two distinct matters, first the supposed encroach-

ment on the drain abovementioned, and second the filling up the ditch or drain which existed by the side of the footpath or bye-lane regarding which no complaint had ever been made by the Municipality. Having regard probably to the Raja's position, Mr. P. instead of leaving it, as the law required, to the discretion of the trying Magistrate, took upon himself to order that the Raja's personal attendance during the trial should be dispensed with by Mr. H.. On the 17th June, the Raja's Counsel from Calcutta telegraphed to Mr. H. for two days' postponement of the case on grounds of personal inconvenience, and at the same time asked the real prosecutor, Mr. P., to consent to the adjournment. Mr. P. the complainant and prosecutor, replied as follows:—"Case must be commenced Monday, but have directed trying Magistrate to postpone for your argument," thereby showing that Mr. H. was merely to carry out the orders of the prosecutor. On the 18th June after receipt of the counsel's telegram, Mr. P. of his own motion recorded a further proceeding offering to withdraw the case if within a week, the Raja would demolish his wall, &c. On arrival at Maimensing on Monday, the 20th June, the two Counsel whom the Raja had engaged, saw Mr. P. and suggested that so trivial a matter should be settled amicably. In the conversation which ensued Mr. P. according to the statement of both Counsel, described Mr. H. as his "post office and conduit pipe." The Counsel asked for a day's postponement to enable the Raja to come to Maimensing and arrange about an amicable settlement. At Mr. P.'s suggestion a petition, asking for time, was presented the same day to Mr. H., who forwarded it to Mr. P. for orders. Mr. P. requested, that the case might be postponed till the next day when the Counsel's proposals for a settlement would be recorded by Mr. H. and forwarded to Mr. P. The Raja reached Maimensing the same evening, and the next morning at 9-30 one of his Counsel wrote a courteous letter to Mr. P. asking for an interview with a view of discussing the proposed terms. In this letter the Counsel stated that they did not see their way to advise the Raja to plead

guilty to any criminal charge or "to consent to any arrangement which would in the least savour of any admission of guilt." This letter seemed to give great offence to Mr. P. who within half an hour sent a reply in which he declined to have any further communication, written or verbal, with the Counsel and concluded with the needlessly offensive sentence, "I shall be compelled to return any further written communication." At the sitting of the Court of Mr. H. at 1 P.M. on that day, the 21st June, the senior Counsel for the Raja stated to Mr. H. his counter proposals and took care to add that the Chairman of the Municipality was willing to accept either of his proposals as effective if Mr. P. as District Magistrate, would allow him to do so. Mr. H. who evidently knew the nature of Mr. P.'s intention took upon himself to say that these were "perfectly useless," and without communicating with Mr. P. remarked in open Court "My instructions are to go on with the case." On the Counsel begging that in accordance with Mr. P.'s written instructions of the day before, the proposals should be sent for his consideration, Mr. H. forwarded them to Mr. P. On the same afternoon while Mr. H. was engaged in recording the examination-in-chief of the witnesses for the prosecution (the cross-examination having been reserved till the next day by arrangement), Mr. P. sent the District Superintendent of Police with about 20 constables, armed with rifles, and some coolies to break down the Raja's wall and to cut a drain through his land. Accordingly the Raja's palace was invaded, his wall was broken and a drain cut through his grounds even before the expiration of the week allowed by Mr. P. in the order he had originally issued on the 18th June. This action of Mr. P. was followed by a prohibitory injunction issued by him, prohibiting the Raja from rebuilding the wall, at the risk of being prosecuted for disobeying the lawful order of a public servant. On the same afternoon shortly after the wall had been broken, Mr. H. called upon the Counsel for the defence to produce the Raja in Court the next day, remarking that "the Raja must stand in the prisoner's dock like any other man." The Counsel repeatedly

protested against this order as unnecessary and calculated needlessly to disgrace the Raja, but Mr. H. declined to cancel his order, and the Court adjourned at that stage till noon of the next day. Mr. P. as well as his subordinate Mr. H. probably anticipated that the Raja would abscond according to the practice of people in his position in Bengal, in order to avoid the indignity of standing in the prisoner's dock, and that his disappearance would be followed by the issue of warrants, attachment of property, proclamations, &c. The Raja however was better advised and, instead of following the usual custom, resolved to appear the next day and despatched a telegram to the Lieutenant-Governor at Darjeeling, detailing what had happened.

On Wednesday, the 22nd of June, the Raja appeared at noon and at once stood in the dock. Mr. H. who knew him personally looked at him, and then called up a low class Mahomedan prisoner, who was made to stand by his side, and sentenced by Mr. H. on a charge of house-breaking by night. After this the Raja's Counsel mentioned to Mr. H. that the Raja had been suffering from fever. Upon this Mr. H. remarked, "If you like, Sir, you may take a seat in the body of the Court." The Raja, keenly feeling the indignity of his position declined the offer, adding, "I can stand like any other man." At the close of the cross-examination of the witnesses on that day, Mr. H. called upon the Raja to give substantial bail and to execute a personal recognisance for his appearance the next day, in spite of the protests of Counsel that these were wholly unnecessary and unusual under the circumstances. The Raja left the dock on signing the recognisance bond and giving the required bail. On the evening of the same day after Court hours, Mr. P. and Mr. H. had a consultation, and Mr. P. then hit upon the idea of writing a letter to the Counsel for the Raja, with whom he had the day before declined to hold any further communication, throwing the whole responsibility of the Raja's appearance in the dock upon his Counsel. This letter was sent at 10-30 P. M. on the

22nd of June and a reply was returned the next morning quoting Counsel's notes, showing that it was in consequence of an express order from Mr. H. that the Raja had been advised to appear and stand in the dock. The next day, the 23rd June, the Raja again appeared in Court and this time he was advised to avail himself of the offer made by Mr. H. the day before and to take a seat. On this occasion the attitude of Mr. H. was altogether different as he, without any request or application being made on behalf of the Raja, cancelled the bail bond and recognisance given the day before and intimated to the Raja that his attendance was no longer necessary. This was done, there are grounds for believing, by reason of telegraphic instructions which had been sent by the Lieutenant-Governor from Darjeeling on receipt of the Raja's message the day before.

The case proceeded on the 23rd June, and the prosecution being closed, the defence prayed that the prosecutor Mr. P. might be called or tendered for examination, but this application was refused by Mr. H. Mr. P. ordered his subordinate Mr. H. to file on the records of the case a copy of his own letter addressed to the Counsel for the defence, and this order was at once complied with by Mr. H. who over-ruled Counsel's objection, on the ground that he had been ordered by Mr. P. to file the document, but he declined to receive a copy of the reply which Counsel begged him in fairness to receive, in case he felt bound to admit the copy of Mr. P.'s letter containing statements the correctness of which had been challenged in the reply. The case was again taken up on Saturday, the 25th June, after certain adjournments at the instance of Mr. H., who then called upon the defence to meet two charges, namely, one of mischief under the Penal Code, and the other a breach of a bye-law. The Pleader for the prosecution pressed Mr. H. to convict the Raja of the offence of public nuisance, but his application was not entertained. On the 9th June, Mr. H. gave judgment convicting the Raja of the offence of mischief and acquitting him of the breach

of the bye-law, holding that the encroachment alleged had not been proved by the evidence. The sentence passed on the Raja was a fine of Rs. 500 or in default 20 days simple imprisonment. Mr. H. having been invested with first class powers during the trial, the sentence became appealable to the Sessions Judge of Maimensing, but the Raja was advised, under the peculiar circumstances of the case, to move the High Court direct to interfere, on the ground that no offence had been disclosed in the case. The High Court however refused to interfere until the Raja had exhausted his right of appeal. The Raja was thus forced to appeal to the Sessions Judge of Maimensing and his appeal was heard on the 6th August. At the hearing of the appeal the Judge handed down to the Raja's Counsel a letter which Mr. P. had addressed to him on the merits of the appeal and also a printed note which he had received from Mr. P., at the same time remarking that, in his opinion, it was improper on the part of Mr. P. to have written to him. The Judge also intimated to the Counsel that he did not wish any of the grounds of appeal reflecting upon the conduct either of Mr. P. or Mr. H. to be argued, the argument was thus confined to the legality of the conviction only. Judgment however was not delivered for nearly three weeks, after which time the Judge acquitted the Raja of the offence of mischief but public nuisance had been committed by the Raja, but that he did not like to convict him on that charge thereby giving the Raja no possible means of redress before the High Court, as that court could not be moved against a verdict of acqittal. The whole of the nuisance complained of consisted of the accumulation of two feet of pure rain-water in a public drain in front of the Raja's palace, whereas the evidence showed that other municipal drains in the town had a great deal more water in them at the time. The whole correspondence between Mr. P. and the Raja's Counsel, and the orders passed by Mr. P. from time to time, clearly shew that Mr. H. was from the beginning acting under Mr. P.'s "advice and instructions." Mr. P. boldly

attempted to justify his action by reference to an old circular order of the High Court which laid down that District Magistrates were required to "maintain a watchful and intelligent control over the proceedings of their subordinates." On a perusal of the whole circular it is clear that it referred purely to executive matters such as the making and preparation of returns, &c.

After the case was over, the Raja submitted a memorial to the Lieutenant-Governor containing a summary of the facts set forth above and impugning the *bona fides* of Mr. P.'s proceedings on various grounds. This memorial resulted in a very feeble resolution from Sir Charles Elliot, then Lieutenant-Governor of Bengal, who while mildly censuring Mr. P. for his indiscretion, defended his good faith and *bona fides*. As regards Mr. H.'s proceedings Sir Charles Elliott's resolution was absolutely silent. The attention of Parliament was drawn to the facts of this case by Lord Stanley of Alderley in the House of Lords on 8th May 1893; during the debate which followed the Earl of Kimberley then Secretary of State for India, in the course of remarks said :—"I agree entirely with Sir Richard Garth, that it is highly undesirable that the Judicial and Executive powers should be united in one person * * * * (but) I can in no way admit that the union of those two powers is maintained in India for the purpose of enhancing the prestige of the officers of the Indian Government." Viscount Cross, Lord Kimberley's predecessor in office, also condemned the system; he said :—"It is a matter of the greatest importance in regard to the main principle involved, that is uniting the Executive and Judicial functions. It is a matter which I was anxious to deal with myself. What the noble Earl opposite has said is perfectly true, that in the present state of the finances of India it is quite impossible to carry out this improvement, which would be of vast benefit to India if it could be effected. I hope when the noble Earl has discovered some means of improving the finances of India

that matter will be taken in hand. I think in this case the censure of the Lieutenant-Governor was entirely deserved, and that it is very unfortunate that Magistrates should treat men as this Raja was treated, because it is absolutely essential these Rajas should know that at the hands of the English Government they will always receive justice, and that they will not be insulted."

The Government having taken no notice of Mr. P.'s conduct, the Raja was compelled to bring a civil suit, claiming heavy damages against Mr. P. and malicious prosecution, &c., but was subsequently advised to withdraw the suit on Mr. P. making an apology and expressing his regret for what he had done. The suit was accordingly withdrawn.

CASE NO. 20.

The Khulna Assault Case.—1892.

The Khulna assault case illustrates in a very remarkable manner the utter helplessness of Deputy Magistrates in Bengal, and their subserviency to District Magistrates under the present system. The Deputy Magistrates in Bengal are chiefly Bengali gentlemen who have to depend for their promotion, and prospects in life upon the good will of the District Magistrate under whom they serve. Mr. B. happened to be District Magistrate of Khulna and subordinate to him was Babu S. C. B., a Deputy Magistrate of several years standing. On the 19th July 1894, one Keshub Lal Mittra, a writer in the employ of a zemindar in the interior of Khulna, was informed that at about 10-30 the next morning, the Magistrate and Collector of the District, Mr. B., would be passing through the village, and Keshub Lal Mittra was instructed to keep ready certain provisions in the shape of fowls, eggs, and milk for the Collector, and to provide also food for his horse and groom. Keshub Lal Mittra according to custom and without expecting any payment, procured fowls and eggs for Mr. B. and secured two milch cows, so that Mr. B. on his arrival might be supplied with fresh milk. The next morning

Mr. B. arrived a couple of hours earlier than was expected and walked up to the zemindar's house of which Keshub Lal Mittra was in charge, looked at the poultry and eggs and enquired where the *naib* or head officer of the zemindar was. Keshub Lal Mittra replied, that the *naib* had gone to Khulna. Mr. B. then asked: "Who are you?" Keshub replied, "I am a *mohurir* (writer)," and immediately Mr. B. struck him with a cane drawing blood. The man then asked what his offence was, whereupon he received about 14 cuts on his person, the result of which was that he fell down in a swoon. Mr. B. walked out of the place without taking any notice of the injured man, who placed himself under the treatment of a medical practioner and suffered from fever as the consequence of the assault. As soon as he recovered from the fever he went straight to Khulna by boat and on Monday, 30th July, presented a petition before the Deputy Magistrate, Babu S. C. B., who was then in magisterial charge of Khulna, charging Mr. B. with having caused hurt and with criminal trespass. The Deputy Magistrate thereupon examined the man on oath, according to law, putting a few questions to him and made a note to the effect that the marks on the petitioner's person appeared dry. This petition was presented at noon; an hour afterwards Babu S. C. B. dismissed the complaint on two grounds, firstly that the case was one of too trivial a nature, and secondly that it was upon the face of it, manifestly false. At 1-15 Keshub Lal Mittra applied for copies of the Deputy Magistrate's order with what is usually called the "expedition fee," on the payment of which the petitioner is entitled to get the copies on the same day. such applications for copies may be presented as a matter of right till 2 P.M. everyday, but after 2 P.M. it is always discretionary with the presiding magistrate to grant such copies or not. But in this instance the application had been presented before 2 P.M., and it was not till 2 o'clock that the applicant's agent was told that there was a technical omission in the application, in as much as the name of the trying officer had not been given. The officer o

the Court further reported that the record of the case could not be traced as the name of the trying officer had been omitted! A subsequent petition for copies was presented to the same Deputy Magistrate supplying the omission at 2-45 P.M., but the Deputy Magistrate recorded an order that as it was then after 2-45 P. M., the application could not be granted. The applicant was therefore unable to obtain copies on the day. The next day the man presented another application with a further expedition fee at 12-26 P.M. This presistent action on the part of Keshub Lal Mittra, which must have considerably irritated the Deputy Magistrate, elicited the information that the latter had decided to prosecute the applicant for preferring a false charge against the Magistrate of the District, and therefore no copies could be given, as the matter was not then final. In consequence of this refusal on the part of the Deputy Magistrate, Keshub Lal Mittra applied on the 1st of August to the Sessions Judge of Khulna, for an order that copies might be furnished to him forthwith, and this order was granted by the Judge. In the meantime Mr. B. who was then in the interior, having heard of the proceedings in the Deputy Magistrate's Court and of the intention on the part of Keshub Lal Mittra to move the Sessions Judge, wrote a private letter to the latter of which the following is a copy:—

MY DEAR P., "BAGIRHAT, *31st July*, 1894.

I am just informed that a Zamindar's *Mohurrir*, whom I struck the week before last, brought a case of assault yesterday against me before the Deputy Magistrate in charge; that the Deputy Magistrate (wrongly and foolishly) dismissed the case, and that a motion has been made before you. If this is so, please set aside the order under section 203, and order a retrial anywhere you want. I quite admit striking the man; I was in the middle of a 40-mile ride and had sent word a day before to the Zamindar's Cutchery (estate office) to have a glass of milk for me (which I would have paid for several times over if desired. I did actually give an old woman 10 miles further on, a rupee for a glass of milk). I found no milk and being very hot and thirsty, and having a little cane in my hand, I regret to say that I lost my temper and struck the *Mohurrir* several times. Any man might have done the same; though I freely admit I was wrong. I hear they have

petitioned the L. G. If that is so, I shall tell him the real facts as soon as he comes here to-morrow. You may file this in the record.

Yours sincerely,

N. D. B. B."

The Sessions Judge having granted copies of the Deputy Magistrate's proceedings, Keshub Lal Mittra at once proceeded to Calcutta and moved the High Court,—firstly, to set aside the order of the Deputy Magistrate dismissing the complaint; secondly, to set aside the order calling upon him to show cause why he should not be prosecuted under section 111 of the Penal Code for bringing a false charge; and thirdly, that the petitioner's complaint should be transferred to some other district for trial, in as much as it was impossible for him to obtain justice in the court of any magistrate at Khulna, as all the magistrates there were subordinate to the District Magistrate, Mr. B. The High Court, consisting of the Chief Justice and Mr. Beverley, issued a rule why the orders prayed for by Keshub Lal Mittra should not be made. In the meantime the Deputy Magistrate, Babu S. C. B., having heard that Keshub Lal Mittra had proceeded to Calcutta to move the High Court, and having also been informed of the contents of Mr. B.'s letter to the Sessions Judge, thought it best himself, of his own motion, to quash the order he had made calling upon Keshub Lal Mittra to show cause why he should not be prosecuted for bringing a false charge. On the hearing of the rule before the High Court, Mr. B. expressed his regret for having assaulted the complainant and apologised to him, and no cause being shown in answer to the rule, it was made absolute and the case transferred to the Court of the District Magistrate of Alipore, one of the suburbs of Calcutta. Keshab Lal Mittra, however, after the apology tendered by Mr. B. and under the advice of his Counsel thought fit not to press the charge against Mr. B., and the case was accordingly withdrawn. On behalf of the Deputy Magistrate, however, it was put forward, and the plea was accepted by the Lieutenant-Governor, that previously he had been suffering from a disease of the brain, but

within two months however, Sir Charles Elliott, the then Lteutenant-Governor of Bengal, promoted him to a higher grade in the service and notified such promotion in the *Government Gazette*. Facts however came to light which showed that from the very beginning Sir Charles Elliott was anxious to defend both Mr. B. and the Deputy Magistrate who had so misconducted himself. The latter did not hesitate to admit in a private conversation with Keshub Lal Mittra's Counsel in Calcutta, that he had been placed in a position of great difficulty, thereby implying that he had not the courage to issue a summons against his official superior, the District Magistrate. His misconduct in this matter went wholly unpunished, and the obvious result of the action of the Bengal Government was to make other Deputy Magistrates feel that if placed in similar circumstances they must not assert their independence.

PART IV

Mr. R. C. Dutt's Scheme and Lord Hobhouse's Memorial

SEPARATION OF JUDICIAL AND EXECUTIVE SERVICES.

[*Memorial submitted to the Secretary of State for India on July 1, 1899. This document is included in the present collection as it refers to and supports Mr. Romesh Dutt's scheme of the separation of the services published in 1893. Mr. Dutt's scheme is appended to the Memorial.*]

MY LORD,

We the undersigned beg leave to submit to you, in the interests of the administration of justice, the following considerations in favour of the separation of judicial from executive duties in India. The present system, under which the chief executive official of a District collects the revenue, controls the police, institutes prosecutions, and at the same time exercises large judicial powers, has been, and still is, condemned not only by the general voice of public opinion in India, but also by Anglo-Indian officers, and by high legal authorities. The state of Indian opinion with reference to the question is so well known as to require neither proof nor illustration. The separation of judicial and executive functions has been consistently urged throughout a long series of years alike by the Indian press and by public bodies and individuals well qualified to represent Indian public opinion. We propose, however, to refer briefly to some of the numerous occasions upon which the principle of separation has been approved by official authorities; next, to explain the nature of the existing grievance, and the proposed remedy; and finally, to discuss objections which have been or may be advanced against alteration of the present system. This Memorial, therefore, consists of three sections, which it may be convenient to indicate as follows:

(*a*) AN HISTORICAL RETROSPECT (Paras. 2 to 10);
(*b*) THE EXISTING GRIEVANCE, AND THE REMEDY (Paras. 11 to 14);
(*c*) ANSWERS TO POSSIBLE OBJECTIONS (Paras. 15 to 18).

(*a*)—AN HISTORICAL RETROSPECT.

2. So long ago as 1793 the Government of India, under Lord Cornwallis, recognised the dangers arising from the combination, in one and the same officer, of revenue with judicial duties. Section 1 of Regulation II., 1793, contained the following passage:

"All questions between Government and the landholders respecting the assessment and collection of the public revenue, and disputed claims between the latter and their rayats, or other persons concerned in the collection of their rents, have hitherto been cognizable in the Courts of *Maal Adawlut*, or Revenue Courts. The Collectors of the Revenue preside in these Courts as Judges, and an appeal lies from their decision to the Board of Revenue, and from the decrees of that Board to the Governor-General in Council in the Department of Revenue. The proprietors can never consider the privileges which have been conferred upon them as secure whilst the revenue officers are vested with these judicial powers. Exclusive of the objections arising to these Courts from their irregular, summary and often *ex parte* proceedings, and from the Collectors being obliged to suspend the exercise of their judicial functions whenever they interfere with their financial duties, it is obvious that, if the Regulations for assessing and collecting the public revenue are infringed, the revenue officers themselves must be the aggressors, and that individuals who have been wronged by them in one capacity can never hope to obtain redress from them in another. Their financial occupations equally disqualify them for administering the laws between the proprietors of land and their tenants. Other security, therefore, must be given to landed property and to the rights attached to it before the desired improvements in agiculture can be expected to be effected. Government must divest itself of the power of infringing in its executive capacity the rights and privileges which, as exercising the legislative authority, it has conferred on the landholders. The revenue officers must be deprived of their judicial powers. All financial claims of the public, when disputed under the Regulations, must be subjected to the cognizance of the Courts of Judicature superintended by Judges who, from their official situations and the nature of their trusts, shall not only be wholly uninterested in the result of their decisions, but bound to decide impartially between the public and the proprietors of land, and also between

the latter and their tenants. The Collectors of the Revenue must not only be divested of the power of deciding upon their own acts, but rendered amenable for them to the Courts of Judicature, and collect the public dues subject to a personal prosecution for every exaction exceeding the amount which they are authorised to demand on behalf of the public, and for every deviation from the Regulations prescribed for the collection of it. No power will then exist in the country by which the rights vested in the landholders by the Regulations can be infringed, or the value of landed property affected."

3. These observations aptly anticipated the basis of the criticisms which during the succeeding century have so often been passed, as well by individuals as by public bodies of the highest authority, upon the strange union of the functions of constable and magistrate, public prosecutor and criminal judge, revenue collector and Appeal Court in revenue cases. In 1838 a Committee appointed by the Government of Bengal to prepare a scheme for the more efficient organisation of the Police, issued its report. As a member of that Committee Mr. F. J. Halliday (afterwards Sir Frederick Halliday, some time Lieutenant-Governor of Bengal and Member of the Council of the Secretary of State) drew up an important Minute in which, after citing at length the considerations that had been urged in favour of separating police from judicial duties in London, he stated that they applied with double force to India. The passage quoted with approval by Mr. Halliday declared that there was no more important principle in jurisprudence than the separation of the judicial from the executive ministerial functions; that a scheme to combine the duties of Judge and Sheriff, of Justice of the Peace and constable in the same individuals would be scouted as absurd as well as mischievous; that a magistrate ought to have no previous knowledge of a matter with which he had to deal judicially; and that the whole executive duty of preventing and detecting crimes should be thrown upon the police. In support of the proposition that these remarks applied with double force to India, Mr. Halliday wrote :—

"In England a large majority of offenders are, as here, tried and sentenced by the magistrates: but in the former country the cases so tried are comparatively of a trivial and unimportant nature. In India the powers of the Magistrates are much greater; their sentences extend to imprisonment for three years, and their jurisdiction embraces offences which, both for frequency and importance, are by far the weightiest subjects of the criminal administration of the country. The evil which this system produces is twofold: it affects the fair distribution of justice and it impairs at the same time, the efficiency of the police. The union of Magistrate with Collector has been stigmatised as incompatible, but the junction of thief-catcher with judge is surely more anomalous in theory, and more mischievous in practice. So long as it lasts, the public confidence in our criminal tribunals must always be liable to injury, and the authority of justice itself must often be abused and misapplied. For this evil which arises from a constant and unavoidable bias against all supposed offenders, the power of appeal is not a sufficient remedy:—the danger to justice, under such circumstances, is not in a few cases, nor in any proportion of cases, but in every case. In all the Magistrate is constable, prosecutor and judge. If the appeal be necessary to secure justice in any case, it must be so in all: and if—as will follow—all sentences by a Magistrate should properly be revised by another authority, it would manifestly be for the public benefit that the appellate tribunal should decide all cases in the first instance. It is well known, on the other hand, that the judicial labours of a Magistrate occupy nearly all his time, that which is devoted to matters strictly executive being only the short space daily employed in hearing *thana* reports. But the effectual management of even a small police force, and the duties of a public prosecutor, ought to occupy the whole of one man's time, and the management of the police of a large district must necessarily be inefficient which, from press of other duties, is slurred over in two hasty hours of each day. I consider it then an indispensable preliminary to the improvement of our system that the duties of preventing crime and of apprehending and prosecuting offenders should, without delay, be separated from the judicial function."

4. Mr. Halliday's opinions on this subject were substantially approved by two other members of the Committee appointed by the Government of Bengal—Mr. W. W. Bird and Mr. J. Lowis. Mr. Bird, who was president of the Committee, stated that he had no objection to the disunion of executive from judicial functions. He added that he had invariably advocated the principle alike in the Revenue and the Judicial Departments, but as it was at that time pertinaciously disregarded in one department it could not very

consistently be introduced in the other. Mr. Lowis characterized Mr. Halliday's proposals as "systematic in plan, complete in detail, and sound in principle." With reference to Mr. Bird's observations, just cited, Mr. Lowis said that it was fallacious "to aver that a departure from right principle in one branch of administration requires, for the sake of consistency, a departure from it in another." It is true that Mr. Halliday, eighteen years later, held a different view, and thought that British administration should conform to the oriental idea of uniting all powers into one centre. But his personal change of opinion does not affect the force of his former arguments.

5. Again, in 1854, in the course of a letter to the Government of India, Mr. C. Beadon, Secretary to the Government of Bengal, wrote:

"The only separation of functions which is really desirable is that of the executive and judicial, the one being a check upon the other: and if the office of Magistrate and Collector be reconstituted on its former footing I think it will have to be considered whether . . . . the Magistrates should not be required to make over the greater portion of their judicial duties to qualified subordinates, devoting their own attention chiefly to police matters and the general executive management of their districts."

In November of the same year, as a member of the Council of the Governor-General, the Hon. (afterwards Sir) J. P. Grant recorded a Minute in which he said that the combination of the duty of the Superintendent of Police and Public Prosecutor with the functions of a Criminal Judge was objectionable in principle, and the practical objections to it had been greatly aggravated by the course of legislation which had raised the judicial powers of a Magistrate six times higher than they were in the days of Lord Cornwallis. "It ought," Mr. Grant continued, "to be the fixed intention of the Government to dissever as soon as possible the functions of Criminal Judge from those of thief-catcher and Public Prosecutor, now combined in the office of Magistrate. That seems to me to be indispensable as a step towards any great improvement in our criminal jurisprudence."

6. Two years later—in September, 1856—a Despatch of the Court of Directors of the East India Company (No. 41, Judicial Department) on the re-organisation of the Police in India pointed out that "to remedy the evils of the existing system, the first step to be taken is, wherever the union at present exists, to separate the police from the administration of the land revenue. . . . . In the second place, the management of the police of each district should be taken out of the hands of the magistrate."

7. In February, 1857, a further Minute was recorded by the Hon. J. P. Grant, member of the Council of the Governor-General, upon the "Union of the functions of Superintendent of Police with those of a Criminal Judge." Mr. Grant, whose opinions Mr. (afterwards Sir Barnes) Peacock generally concurred, wrote:

"The one point for decision, as it appears to me, on which alone the whole question turns, is this—in which way is crime more certainly discovered, proved and punished, and innocence more certainly protected—when two men are occupied each as thief-catcher, prosecutor, and judge, or when one of them is occupied as thief-catcher and prosecutor, and the other as judge? I have no doubt that the principle of division of labour has all its general advantages, and an immense preponderance of special and peculiar advantages, when applied to this particular case; and I have no doubt that if there is any real difference between India and Europe in relation to this question, the difference is all in favour of relieving the Judge in India from all connexion with the detective officer and prosecutor. The judicial ermine is, in my judgment, out of place in the bye-ways of the detective policeman in any country, and those bye-ways in India are unusually dirty. Indeed, so strongly does this feeling operate, perhaps unconsciously, upon the English minds of the honourable body of men from whom our Magistrates are chosen, that in practice the real evil of the combination is, not that a Judge, whose mind has been put out of balance by his antecedents in relation to the prisoner, tries that prisoner, but that the Superintendent of Police, whose nerve and honesty are indispensable to the keeping of the native police officers in order, abandons all real concern with the detection of crime, and the prosecution of criminals, in the mass of cases and leaves this important and delicate duty almost wholly, in fact, to the native *darogahs*. . . . . If the combination theory were acted upon in reality—if an officer, after bribing spies, endeavouring to corrupt accomplices, laying himself out to hear what every tell-tale has to say, and put-

ting his wit to the utmost stretch, for weeks perhaps, in order to beat his adversary in the game of detection, were then to sit down gravely as a Judge, and were to profess to try dispassionately upon the evidence given in court the question of whether he or his adversary had won the game, I am well convinced that one or two cases of this sort would excite as much indignation as would save me the necessity of all argument *a priori* against the combination theory."

Unfortunately the theory has been acted upon in reality. Actual cases—more than one or two—have excited the vehement indignation against which Mr. Grant sought in 1857 to provide. Mr. Grant added that the objections to separation of judicial and police functions seemed to him, after the best attention he could give them, to be founded on imaginary evils. He refused to anticipate "such extreme antagonism between the native public officer and the native Judge as would be materially inconvenient." "Under a moderately sensible European Magistrate, controlled by an intelligent Commissioner, who would not talk or act as if police *peons* and *darogahs* were infallible, and dispassionate judges were never right, I cannot see why there should be any such consequences."

8. These, and similar, expressions of opinion were not lost upon the Government of India, as the history of the legislation which was undertaken immediately after the suppression of the Mutiny shows. In 1860 a Commission was appointed to enquire into the organization of the Police. It consisted of representative officers from the North-West Provinces, Pegu, Bengal, Madras, the Punjab, and Oudh—"all," in the words of Sir Bartle Frere, "men of ripe experience, especially in matters connected with Police." The instructions issued to the Commission contained the following propositions:

"The functions of a police are either protective and repressive or detective, to prevent crime and disorder, or to find out criminals and disturbers of the peace. These functions are in no respect judicial. This rule requires a complete severance of the police from the judicial authorities, whether those of higher grade or the inferior magistracy in their judicial capacity. When, as is often the case in India, various functions are com-

bined in the hands of one Magistrate, it may sometimes be difficult to observe this restriction; but the rule should always be kept in sight that the official who collects and traces out the links in the chain of evidence in any case of importance should never be the same as the judicial officer, whether of high or inferior grade, who is to sit in judgment on the case. . . . . It may sometimes be difficult to insist on this rule, but experience shows it is not nearly so difficult as would be supposed, and the advantages of insisting on it cannot be overstated."

Again:

"The working police having its own officers exclusively engaged on their own duties in preventing or detecting crime, the question is, at what link in the chain of subordination between the highest and lowest officers in the executive administration is the police to be attached, and so made responsible as well as subordinate to all above that link in the chain? The great object being to keep the judicial and police functions quite distinct, the most perfect organization is, no doubt, when the police is subordinate to none but that officer in the executive Government who is absolved from all judicial duty, or at least from all duty involving original jurisdiction, so that his judicial decisions can never be biassed by his duties as a Superintendent of police. . . . . It is difficult to lay down any more definite rule as to the exact point where the subordination should commence than by saying that it should be so arranged that an officer should never be liable to try judicially important cases got up under his own directions as a police officer. . . . . This raises the question—Who is to be responsible for the peace of the district? Clearly that officer, whoever he may be, to whom the police are immediately responsible. Under him, it is the duty of every police officer and of every magisterial officer of whatever grade, in their several charges, to keep him informed of all matters affecting the public peace and the prevention and detection of crime. It is his duty to see that both classes of officers work together for this end; as both are subordinate to him, he ought to be able to ensure their combined action. The exact limits of the several duties of the two classes of officers it may be difficult to define in any general rule; but they will not be difficult to fix in practice if the leading principles are authoritatively laid down, and, above all, if the golden rule be borne in mind that the judicial and police functions are not to be mixed up or confounded, that the active work of preventing or detecting crime is to rest entirely with the police, and not to be interfered with by those who are to sit in judgment on the criminal."

9. The Police Commission in their Report (dated September, 1860) expressly recognised and accepted this "golden rule." Paragraph 27 of their Report was as follows:

"That as a rule there should be complete severance of executive police from judicial authorities; that the official who collects and traces out the links of evidence—in other words, virtually prosecutes the offendor—should never be the same as the officer, whether of high or inferior grade, who is to sit in judgment on the case, even with a view to committal for trial before a higher tribunal. As the detection and prosecution of criminals properly devolve on the police, no police officer should be permitted to have any judicial function."

But although the Commission adopted without question the general principle that judicial and police functions ought not to be confounded, they proposed, as a matter of practical and temporary convenience, in view of "the constitution of the official agency" then existing in India, that an exception should be made in the case of the District Officer. The Commission did not maintain that the principle did not in strictness, apply to him. On the contrary, they appear to have stated expressly that it did. But they recommended that in his case true principle should, for the time being, be sacrificed to expediency. They reported:

"That the same true principle, that the judge and detective officer should not be one and the same, applies to officials having by law judicial functions, and should, as far as possible, be carefully observed in practice. But, with the constitution of the official agency now existing in India, an exception must be made in favour of the District Officer. The Magistrates have long been, in the eye of the law, executive officers, having a general supervising authority in matters of police, originally without extensive judicial powers. In some part of India this original function of the Magistrates has not been widely departed from; in other parts extensive judicial powers have been superadded to their original and proper function. This circumstance has imported difficulties in regard to maintaining the leading principle enunciated above, for it is impracticable to relieve the Magistrates of their judicial duties; and, on the other hand, it is at present inexpedient to deprive the police and public of the valuable aid and supervision of the District Officer in the general management of police matters."

The commission recognised that this combination of judicial with police functions was open to objection, but looked forward to a time when improvements in organisation would, in actual practice, bring it to an end:—

"That this departure from principle will be less objectionable in practice when the executive police, though bound to obey the magistrate's order

quoad the criminal administration, is kept departmentally distinct and subordinate to its own officers, and constitutes a special agency having no judicial function. As the organization becomes perfected and the force effective for the performance of its detective duties, any necessity for the Magistrate to take personal action in any case judicially before him ought to cease."

10. The recommendations of the Police Commission were adopted by the Government of India and, in accordance with them, Sir Bartle Frere introduced in the Legislative Council on September 29, 1860, a Bill for the Better Regulation of Police. The debate on the second reading of this measure, which afterwards became Act V. of 1861, and is still in force, is important as showing that the Government of India regarded the exceptional union of judicial with police functions in the District Officer as a temporary compromise. Sir Barnes Peacock, the Vice-President of the Council, stated that he " had always been of opinion that a full and complete separation ought to be made between the two functions," while in reply to Mr. A. Sconce, who had argued that some passages in the Report of the Police Commission were at variance with the principle of separation, Sir Bartle Frere said:—

"It was one thing to lay down a principle and another to act on it at once and entirely when it was opposed to the existing system, to all existing forms of procedure, and to prejudices of long standing. Under such circumstances, it was often necessary to come to a compromise. . . . . He hoped that at no distant period the principle would be acted upon throughout India as completely as his hon. friend could desire. The hon. member had called the Bill a 'half and half' measure. He could assure the hon. gentleman that nobody was more inclined that it should be made a whole measure than he was, and he should be very glad if his hon. friend would only induce the Executive Governments to give it their support so as to effect a still more complete severance of the police and judicial functions than the Bill contemplated."

The hope expressed by Sir Bartle Frere in 1860 has yet to be fulfilled. It might have been realised in 1872 when the second Code of Criminal Procedure was passed. But the Government and the Legislature of the day were still under the dominion of the fallacy that all power must be centred in the District Magistrate, and the opportunity of applying the sound

principle for which Sir Bartle Frere had contended was unfortunately rejected. In 1882 the Code of Criminal Procedure was further revised, and the Select Committee, in their report on the Criminal Procedure Bill, said:—

"At the suggestion of the Government of Bengal, we have omitted section 38, conferring police powers on Magistrates. We consider that it is inexpedient to invest Magistrates with such powers, or to make their connexion with the police more close than it is at present."

(b)—THE EXISTING GRIEVANCE, AND THE REMEDY.

11. The request which we have now the honour of urging is, therefore, that—in the words used by Sir J. P. Grant in 1854—the functions of criminal judge should be dissevered from those of thief-catcher and public prosecutor, or—in the words used by Sir Barnes Peacock in 1860—that a full and complete separation should be made between judicial and executive functions. At present these functions are to a great extent combined in India, especially in the case of the officers who in the Districts of Regulation Provinces are known as Collector-Magistrates, and the non-Regulation Provinces are known as Deputy Commissioners. The duties of these officers are thus described by Sir W. W. Hunter:*—

"As the name of Collector-Magistrate implies, his main functions are twofold. He is a fiscal officer, charged with the collection of the revenue from the land and other sources; he also is a revenue and criminal judge, both of first instance and in appeal. But his title by no means exhausts his multifarious duties. He does in his smaller local sphere all that the Home Secretary superintends in England, and a great deal more; for he is the representative of a paternal and not a constitutional government. Police, jails, education, municipalities, roads, sanitation, dispensaries, the local taxation, and the imperial revenues of his District, are to him matters of daily concern." It is submitted that, just as Lord Cornwallis's Government held a century ago that the proprietors of land could never consider the privileges which had been conferred upon them as secure while the revenue officers

* "The Indian Empire," p. 513 (3rd edition).

were vested with judicial powers, so also the administration of justice is brought into suspicion while judicial powers remain in the hands of the detective and public prosecutor.

12. The grounds upon which the request for full separation is made are sufficiently obvious. They have been anticipated in the official opinions already cited. It may, however, be convenient to summarize the arguments which have been advanced of late years by independent public opinion in India. These are to the effect (i) that the combination of judicial with executive duties in the same officer violates the first principles of equity; (ii) that while a judicial officer ought to be thoroughly impartial and approach the consideration of any case without previous knowledge of the facts, an executive officer does not adequately discharge his duties unless his ears are open to all reports and information which he can in any degree employ for the benefit of his District; (iii) that executive officers in India, being responsible for a large amount of miscellaneous business have not time satisfacforily to dispose of judicial work in addition; (iv) that, being keenly interested in carrying out particular measures, they are apt to be brought more or less into conflict with individuals, and, therefore, that it is inexpedient that they should also be invested with judicial powers; (v) that under the existing system Collector-Magistrates do, in fact, neglect judicial for executive work, ; (vi) that appeals from revenue assessment are apt to be futile when they are heard by revenue officers; (vii) that great inconvenience, expense, and suffering are imposed upon suitors required to follow the camp of a judicial officer who, in the discharge of executive duties, is making a tour of his District; and (viii) that the existing system not only involves all whom it concerns in hardship and inconvenience but also, by associating the judicial tribunal with the work of the police and of detectives, and by diminishing the safeguards afforded by the rules of evidence, produces actual miscarriages of justice and creates,

although justice be done, opportunities of suspicion, distrust and discontent which are greatly to be deplored. There is, too, a further argument for the separation, which arises out of the very nature of the work incidental to the judicial office, and which of itself might well be regarded as conclusive in the matter. It is no longer open to us to content ourselves with the pleasant belief that to an Englishman of good sense and education, with his unyielding integrity and quick apprehension of the just and the equitable, nothing is easier than the patriarchal administration of justice among oriental populations. The trial in Indian courts of justice of every grade must be carried out in the English method, and the judge or magistrate must proceed to his decision upon the basis of facts to be ascertained only through the examination and cross-examination before him of eye-witnesses testifying each to the relevant facts observed by him, and nothing more. It is not necessary for us to dwell on the importance of this procedure, nor is it too much to say that with this system of trial no judicial officer can efficiently perform his work otherwise than by close adherence to the methods and rules which the long experience of English lawyers has dictated, and of which he cannot hope to acquire a practical mastery, unless he makes the study and practice of them his serious business. In other words it is essential to the proper and efficient—and we might add impartial—administration of justice that the judicial officer should be an expert specially educated and trained for the work of the court.

13. In Appendix B to this Memorial summaries are given of various cases which, it is thought, illustrate in a striking way some of the dangers that arise from the present system. These cases of themselves might well remove—to adopt Sir J. P. Grant's words—"the necessity of argument *a priori* against the combination theory." But the present system is not merely objectionable on the ground that from time to time it is, and is clearly proved to be, responsible for a particular case of actual injustice. It is also objectionable

on the ground that, so long as it exists, the general administration of justice is subjected to suspicion, and the strength and authority of the Government are seriously impaired. For this reason it is submitted that nothing short of complete separation of judicial from executive functions by legislation will remove the danger. Something perhaps, might be accomplished by purely executive measures. Much, no doubt, might be accomplished by granting to accused persons, in important cases, the option of standing their trial before a Sessions Court. But these palliatives fall short of the only complete and satisfactory remedy, which is, by means of legislation, to make a clear line of division between the judicial and the executive duties now often combined in one and the same officer. So long as Collector-Magistrates have the power themselves to try, or to delegate to subordinates within their control, cases as to which they have taken action or received information in an Executive capacity, the administration of justice in India is not likely to command complete confidence and respect.

14. It would be easy to multiply expressions of authoritative opinion in support of the proposed reform. But, in view of the opinions already cited, it may be enough to add that, in a debate on the subject which took place in the House of Lords on May 8th, 1893, Lord Kimberley, then Secretary of State for India, and his predecessor, Lord Cross, showed their approval of the principle of separation in no ambiguous terms. Lord Cross said, on that occasion, that it would be, in his judgment, an "excellent plan," to separate judicial from executive functions, and that it would "result in vast good to the Government of India." It was in the same spirit that Lord Dufferin, as Viceroy of India, referring to the proposal for separation put forward by the Indian National Congress, characterised it as a "counsel of perfection." Appendix A to the present Memorial contains, *inter alia*, the favourable opinions of the Right Hon. Sir Richard Garth, late Chief Justice of Bengal, the Right Hon.

Lord Hobhouse, Legal Member of the Viceroy's Council, 1872-77, the Right Hon. Sir Richard Couch, late Chief Justice of Bengal, Sir J. B. Phear, late Chief Justice of Ceylon, Sir R. T. Reid, Q. C., M. P., Attorney-General, 1894-5, Sir William Markby, late Judge of the High Court, Calcutta, and Sir Raymond West, late Judge of the High Court, Bombay. These opinions were collected and compiled by the British Committee of the Indian National Congress, and, among other important indications of opinions prevalent in India, we beg to refer you to the series of resolutions adopted by the Indian National Congress—which Lord Lansdowne, as Viceroy, referred to in 1891 as a "perfectly legitimate movement" representing in India "what in Europe would be called the more advanced Liberal party." In 1886 the Congress adopted a resolution recording "an expression of the universal conviction that a complete separation of executive and judicial functions has become an urgent necessity," and urging the Government of India "to effect this separation without further delay." Similar resolutions were carried in 1887 and 1888, and the proposal formed in 1889, 1890, and 1891 the first section of an "omnibus" resolution affirming the resolutions of previous Congresses. In 1892 the Congress again carried a separate resolution on the question, adding to its original resolution a reference to "the serious mischief arising to the country from the combination of judicial and executive functions." In 1893 the resolution carried by the Congress was as follows :—

"That this Congress, having now for many successive years vainly appealed to the Government of India to remove one of the gravest stigmas on British rule in India, one fraught with incalculable oppression to all classes of the community throughout the country, now hopeless of any other redress, humbly entreats the Secretary of State for India to order the immediate appointment, in each province, of a Committee (one-half at least of whose members shall be non-official natives of India, qualified by education and experience in the workings of the various courts to deal with the question) to prepare each a scheme for the complete separation of all judicial and executive functions in their own provinces with as little additional cost to the State as may be practicable and the submission of such schemes,

with the comments of the several Indian Governments thereon, to himself, at some early date which he may be pleased to fix."

A similar resolution was carried in 1894, 1895, and 1896. During recent years, also, practical schemes for separation have been laid before the Congress.

(*c*)—ANSWERS TO POSSIBLE OBJECTIONS.

15. The objections which, during the course of a century, have been urged against the separation of judicial and executive functions are reducible, on analysis, to three only: (i) that the system of combination works well, and is not responsible for miscarriage of justice; (ii) that the system of combination, however indefensible it may seem to Western ideas, is necessary to the position, the authority, and, in a word, to the "prestige" of an Oriental officer; and (iii) that separation of the two functions, though excellent in principle, would involve an additional expenditure which is, in fact, prohibitive in the present condition of the Indian finances.

16. It is obvious that the first objection is incompatible with the other two objections. It is one thing to defend the existing system on its merits; it is another thing to say that, although it is bad, it would be too dangerous or too costly to reform it. The first objection is an allegation of fact. The answer—and, it is submitted, the irresistible answer—is to be found in the cases which are set forth in Appendix B to this Memorial. The cases are but typical examples taken from a large number. It may be added that, among the leading advocates of separation in India, are Indian barristers of long and varied experience in the Courts who are able to testify, from personal knowledge, to the mischievous results of the present system. Their evidence is confirmed, also from personal knowledge, by many Anglo-Indian Judges of long experience.

17. The second objection—that the combination of judicial and executive functions is necessary to the "prestige" of an Oriental officer—is perhaps more difficult to handle. For reasons which are easy to understand, it is not often

put forward in public and authoritative statements. But it is common in the Anglo-Indian press, it finds its way into magazine articles written by returned officers, and in India it is believed, rightly or wrongly, to lie at the root of all the apologies for the present system. It has been said that Oriental ideas require in an officer entrusted with large executive duties the further power of inflicting punishment on individuals. If the proposition were true, it would be natural to expect that the existing system would be supported and defended by independent public opinion in India instead of being—as it is—deplored and condemned. It is not reasonable to assume that the Indian of to-day demands in the responsible officers of a civilised Government a combination of functions which at an earlier time an arbitrary despot may have enforced. The further contention that a District Magistrate ought to have the power of inflicting punishment because he is the local representative of the Sovereign appears to be based upon a fallacy and a misapprehension. The power of inflicting punishment is, indeed, part of the attributes of Sovereignty. But it is not, on that ground, any more necessary that the power should be exercised by a Collector-Magistrate, who is head of the police and the revenue-system, than that it should be exercised by the Sovereign in person. The same reasoning, if it were accepted, would require that the Viceroy should be invested with the powers of a criminal judge. But it is not suggested that the Viceroy's "prestige" is lower than the "prestige" of a District Judge because the Judge passes sentences upon guilty persons and the Viceroy does not. It is equally a misapprehension to assume that those who urge the separation of judicial from executive duties desire the suppression or extinction of legitimate authority. They ask merely for a division of labour. The truth seems to be that the somewhat vague considerations which are put forward in defence of the existing system on the ground that it is necessary to the due authority of a District Magis-

trate had their origin in the prejudices and the customs of earlier times, revived, to some extent, in the unsettled period which followed the Indian Mutiny. We venture to submit that these considerations are not only groundless and misplaced, but that the authority of Government, far from being weakened by the equitable division of judicial and executive duties, would be incalculably strengthened by the reform of a system which is at present responsible for many judicial scandals.

18. The financial objection alone remains, and it is upon this objection that responsible authorities appear to rely. When Lord Dufferin described the proposal for separation as a "counsel of perfection," he added that the condition of Indian finance prevented it, at that time, from being adopted. Similarly, in the debate in the House of Lords on May 8th, 1893, to which reference has already been made, Lord Kimberley, then Secretary of State, said:

"The difficulty is simply this, that if you were to alter the present system in India you would have to double the staff throughout the country."

and his predecessor, Lord Cross, said:—

"It [the main principle raised in the discussion] is a matter of the gravest possible importance, but I can only agree with what my noble friend has stated, that in the present state of the finances of India it is absolutely impossible to carry out that plan, which to my mind would be an excellent one, resulting in vast good to the Government of India."

The best answer to this objection is to be found in the scheme for separation drawn up in 1893 by Mr. Romesh Chunder Dutt, C. I. E., late Commissioner of the Orissa Division (at that time District Magistrate of Midnapur) and printed in Appendix A to this Memorial. In these circumstances it is not necessary to argue either (i) that any expense which the separation of judicial from executive duties might involve would be borne, and borne cheerfully, by the people of India; or (ii) that it might well be met by economies in certain other directions. Mr. Dutt shows that the separation might be effected by simple re-arrangement of the existing staff, without any additional expense

whatsoever. Mr. Dutt's scheme refers specially to Bengal, the Presidency, that is, for which the reform had been described as impracticable on the ground of cost. Similar schemes for other Presidencies and Provinces have been framed, but it was understood that the most serious financial difficulty was apprehended in Bengal.

19. In view of foregoing considerations we earnestly trust that you will direct the Government of India to prepare a scheme for the complete separation of judicial and executive functions, and to report upon this urgently pressing question at an early date.

We have the honour to be, Sir,

Your obedient Servants,

HOBHOUSE,
RICHARD GARTH,
RICHARD COUCH,
CHARLES SARGENT,
WILLIAM MARKBY,
JOHN BUDD PHEAR,
J. SCOTT,
W. WEDDERBURN,
ROLAND K. WILSON,
HERBERT J. REYNOLDS.

SCHEME (PRINTED IN "INDIA" FOR AUGUST, 1893) SUGGESTED BY MR. ROMESH DUTT, C.I.E., COMMISSIONER OF THE ORISSA DIVISION (AT THAT TIME DISTRICT-MAGISTRATE OF MIDNAPUR).

The recent discussions on the subject of the separation of Judicial and Executive functions in India have given sincere gratification to my countrymen in India. They have read with satisfaction, and also with feelings of gratitude, the views expressed by Lord Stanley in the House of Lords, and the clear and emphatic opinion on the subject expressed by Lord Kimberley. They have learnt with sincere joy that the system of uniting Judicial and Executive functions in the same officer has been condemned by two successive Secretaries of State, Lord Cross and Lord Kimberley. And they entertain a legitimate hope that a policy which has been thus condemned by the highest authorities in Indian affairs will not long continue to be the policy of British rule in India.

Sir Richard Garth, late Chief Justice of the High Court of Calcutta, whose paper on this subject led to the discussions in the House of Lords, has since explained the history of the present system of administration in a clear, lucid, and forcible manner. He has shown that so far back as 1860 a commission appointed to report on the police declared that "the judicial and police functions were not to be mixed up and confounded." He has pointed out that the late Sir Barnes Peacock and other high authorities were against the union of these functions, and that the late Sir Bartle Frere, in introducing the Bill which afterwards became the Police Act of 1861, "hoped that at no distant period the principle (of the separation of Judicial and Executive functions) would be acted upon throughout India." Sir Richard Garth has also informed the public that between

1865 and 1868 the highest civilian authorities in India were again consulted on the subject, and, according to Sir James Stephen, the District Magistrates themselves were "greatly embarrassed by the union in their persons of Judicial and Executive functions." Sir Richard has further told us that under Lord Ripon's Government opinions were again collected, and the present system was only continued because the retention of Judicial powers in the hands of a District Officer was considered (and very wrongly considered, *vide* Lord Kimberley's speech) "essential to the weight and influence of his office." And, lastly, Sir Richard has quoted the words of the present Secretary of State that the present system "is contrary to right and good principle," and he has also quoted the words of the late Secretary of State, who concurs in this opinion with Lord Kimberley.

Such are the opinions of men most capable of forming a judgment on the present system of administration in India, and responsible administrators are anxious to effect a reform which will remove the evil without materially adding to the cost of administration. A practicable scheme of reform will be not unwelcome at the present moment, and many of my countrymen and some of my English friends have asked me to state my views on the subject, as I happen to be in England just now. I venture therefore to suggest the leading features of a scheme which has for many years appeared perfectly feasible to myself, and which I believe will meet the views and wishes not only of my countrymen, but of most Englishmen also, who are quite as anxious for wholesome reform on this point as my countrymen.

It is necessary for me to state that I have been employed on administrative work in Bengal for twenty-two years, and that I have had ample opportunities to observe the practical working of the present system of administration during this period. Within this period I have had the honour of holding charge of some of the largest and most important districts in Bengal—like Burdwan, with its population of a

million and a half, and Bakarganj, with its population of two millions, and Midnapur, with its population of two and a half millions, and Maimansingh, with its population of three and a half millions—which is equal to the population of many a small kingdom in Europe. In these extensive and thickly populated districts I have, for years past, combined in myself the functions of the head of the Police, the head Magistrate, the head Superintendent of Prisons, the head Revenue Officer, the head Tax Collector, the head of the Government Treasury, the head Manager of Government Estates, the head Manager of Minors' States, the head Engineer, the head Sanitary Officer, the head Superintendent of Primary Schools, and various other functions. I have, for years past, directed and watched police enquiries in important cases, had the prisoners in those cases tried by my subordinates, heard and disposed of the appeals of some of those very prisoners, and superintended their labour in prisons. And during all these years I have held the opinion that a separation of Judicial and Executive functions would make our duties less embarrassing, and more consistent with our ideas of judicial fairness; that it would improve both Judicial work and Executive work; and that it would require no material addition to the cost of administration.

Bengal is divided into nine Divisions, viz.: 1. Presidency. 2. Burdwan. 3. Rajshahi. 4. Dacca. 5. Chittagong. 6. Orissa. 7. Patna. 8. Bhagalpur. 9. Chutia-Nagpur. I think it is not feasible, nor desirable perhaps for the present, to effect a separation of Judicial and Executive functions in the Division of Chutia-Nagpur, which consists of Non-Regulation Districts. It is also, perhaps, undesirable to effect such separation in the Districts of Darjiling and Jalpaiguri in Rajshahi Division; in the Hill Tracts of Chittagong Division; and in the Santal Parganas of Bhagalpur Division. In the remaining portions of the Province it is possible to effect the separation at once.

The population of Bengal (excluding Tributary States and

the States of the Maharajas of Kuch Behar, Sikkim, Tipperah), is, according to the census of 1891, *seventy-one millions* in round numbers. The population of the districts alluded to in the last paragraph, in which a separation of Judicial and Executive functions is for the present impracticable, is *seven millions* in round numbers. In the remaining portions of Bengal, having a population of *sixty-four millions*, it is possible to effect the desired separation at once.

Generally speaking, there are two senior Covenanted officers in every Regulation District in Bengal, viz., a District Judge and a District Magistrate. The District Judge is the head of all subordinate judicial officers who dispose of civil cases, and he also tries such important criminal cases as are committed to the Sessions. The work of the District Magistrate is more varied, as has been indicated above. He is the head of the police, supervises prisons, collects revenue and taxes, sells opium and settles liquor-shops, constructs roads and bridges, regulates primary education, and combines with these and other Executive duties the functions and powers of the head Magistrate of his district.

My scheme is simple. The District Magistrate, whom I will henceforth call the District Officer, should be employed purely on executive and revenue work, which is sufficiently varied, onerous, and engrossing, and should be relieved of his judicial duties, which should be transferred to the District Judge. The subordinates of the District Officer, who will continue to perform revenue and executive work only, will remian under him; while those of his present subordinates who will be employed on purely judicial work should be subordinate to the Judge and not to the District Officer.

At present the subordinates of the District officer combine executive and revenue and judicial work. A Joint-Magistrate or Assistant-Magistrate (subordinate to the District Officer), tries criminal cases, and also does revenue and executive work. A Deputy-Magistrate (similarly subordinate to the District Officer) also tries criminal cases and does revenue

and executive work. This arrangement must be changed.

I will first take the case of Joint-Magistrates and Assistant-Magistrates, who are Covenanted officers. Young civilians, as soon as they arrive in Bengal, are posted as Assistant-Magistrates; they try criminal cases and also help the District Officer in his revenue and executive work. After they have had some experience in their work and learnt something of the people, and after they have passed two examinations in Indian law and accounts, and the languages of the province, they are promoted to be Joint-Magistrates. And the Joint-Magistrate tries all the more important criminal cases, and performs much of the important criminal work of the district. And in course of time he becomes a District Officer or a District Judge.

Referring to the Bengal Civil List for April, 1893, which is the last number that is available to me in London now, I find that the present number of Joint-Magistrates and officiating Joint-Magistrates in Bengal (excluding those acting in higher capacities, or on special duty) is only twenty-two. And the number of Assistant-Magistrates, after such exclusion, is also twenty-two. As there are over forty districts in Bengal, it is clear that on the average each District Officer has only one Covenanted Assistant (Joint or Assistant-Magistrate) and no more. In some districts there are more than one, in smaller districts there are none.

I propose that the Assistant-Magistrates should be employed purely on revenue, executive and police work, and should be subordinate to the District Officer. And when the Assistant-Magistrates are promoted to be Joint-Magistrates, they should be employed purely on judicial work, and be subordinate to the District Judge.

This proposal will not only secure the separation of functions contemplated, but will secure two other distinctly beneficial results. In the first place, young civilians fresh from England, and wholly unacquainted with the manners

and habits, and even the colloquial language, of the people of India, will be stopped from trying criminal cases until they have acquired some local knowledge and experience by doing revenue and general executive work, and watching police cases and police administration. And in the second place, such young civilians will receive a more systematic and less confused training in their duties by devoting their attention during the first two or three years to purely executive and revenue and police work, and then employing themselves for some years on purely judicial work.

I next come to the Deputy-Magistrates, who are uncovenanted officers, and generally natives of India. They also combine judicial, executive, and revenue work, and are subordinate to the District Officer. The Civil List gives their number as 305 in all; but excluding those on leave, or employed on special duty, or in sub-divisions (of which I will speak later on), there are, on an average, only four Deputy-Magistrates in the headquarters of each district to help the District Officer. In small districts there are, perhaps, only two; in specially large districts there are as many as six.

I propose that in each district one-half of the Deputy-Magistrates may be employed on purely executive and revenue work, and be placed under the District Officer, and that the other half be employed on purely judicial work, and placed under the District Judge. In some districts, where the revenue work is particularly heavy, probably more than half the Deputy-Magistrates may be placed under the District Officer. And in other districts, where the criminal work is more important, the Judge may require more than half the Deputy-Magistrates. These details can be very easily settled. But in the main it is clear and self-evident that the officers who are able to cope with revenue and criminal work which is heaped on them in a confused manner will be able to cope with it better under the system of division of labour proposed above.

The results of the proposals made above will be these. The District Officer will still be the head executive officer, the

head revenue officer, and the head police officer of his district. He will collect revenue and taxes, and perform all the work connected with revenue administration with the help of his assistants and deputies. He will continue to perform all executive work, and will be armed with the necessary powers. He will watch and direct police investigations, and will be virtually the prosecutor in criminal cases. But he will cease to try, or to have tried by his subordinates, criminal cases, in respect of which he is the police officer and the prosecutor.

On the other hand, the District Judge will, in addition to his present duties, supervise the work of Joint-Magistrates and Deputy-Magistrates employed on purely judicial work. This work of supervision will be better and more impartially done by trained judicial officers than by over-worked executive officers, who are also vitually prosecutors. And the evil which arises from the combination of the functions of the prosecutor and the judge—of which we have had some striking illustrations of late—will cease to exist when the prosecutor is no longer the judge.

The transfer of all judicial work to the District Judge will give him some additional work; but he will easily cope with it with the additional officers who will be placed under him under the proposed scheme. In important and heavy districts the Judge will have a Joint-Magistrate under him, and the Joint-Magistrate may in exceptional cases be vested with the powers of an Assistant-Sessions Judge to relieve the District Judge of his sessions work. In districts where there are no Joint-Magistrates, a senior and selected Deputy-Magistrate can do the Joint-Magistrate's work, and efficiently help the Judge in his duty of supervision of criminal work. With regard to criminal appeals, the District Judge now hears all of them from sentences passed by first-class magistrates. The few appeals from second and third-class magistrates which the District Officer now hears may also be heard by the Judge, and the addition will scarcely be felt. In exceptionally heavy districts like Maimansingh and Midnapur, criminal appeals

did not take more than three hours of my time in a week. A trained Judicial Officer, like the District Judge, would do it in less time, and if he required help in this matter also, his subordinate Joint-Magistrate or a selected Deputy-Magistrate might be empowered to hear petty appeals.

It only remains to deal with what are called sub-districts or sub-divisions in Bengal. The Bengal districts are generally extensive is area ; and, while the central portions are managed and administered from headquarters it is found convenient to form the outlying portions into separate sub-districts or sub-divisions, and to place them in charge of Sub-Divisional Officers. Such Sub-Divisional Officers (generally Deputy-Magistrates, sometimes Assistant or Joint-Magistrates) are also completely subordinate to the District Officer, like the assistants at headquarters.

In Bengal (excluding the backward districts in which the introduction of the proposed scheme is at present impracticable) there are seventy-five sub-divisions. There is only one Sub-Divisional Officer in each sub-division, and he performs revenue and executive and judicial work in his sub-division as his superior, the District Officer, does for the whole district. The question arises, how the scheme of separation can be introduced in these seventy-five sub-divisions.

There is a class of officers, called Sub-Deputy Collectors, who are generally employed on revenue work, but sometimes perform judicial work and try criminal cases. Some of them are employed at headquarters, while others are sent to important Sub-Divisions to help Sub-Divisional Officers. For many years past the work in Sub-Divisions has been increasing, and the demand for a Sub-Deputy Collector in every Sub-Division in Bengal has been growing also. It has been urged that Sub-Divisional Officers who are mainly employed on judicial work cannot find time to perform their revenue work without help. It has also been urged, with great force, that during the absence of Sub-Divisional Officers on their annual tours Sub-Divisional treasuries have to be closed, much to the

inconvenience of the Postal Department, the Civil Justice Department, and all Government Departments, as well as the public. To remove all this inconvenience, and to give the necessary help to Sub-Divisional Officers, it has been urged that a Sub-Deputy Collector should be placed in every sub-division. This should now be done.

The present number of Sub-Deputy Collectors (excluding those who are acting in higher capacities) is 97. Allowing for officers on leave, there will still be 75 officers always available for employment in the 75 sub-divisions. And when a Sub-Deputy Collector is thus posted in each sub-division, he can be entrusted with the revenue work of the sub-division, and be subordinate to the District Officer, while the Sub-Divisional Officer will be subordinate to the District Judge.

I make this proposal after a careful consideration of the nature of the revenue work which has to be done in sub-divisions. All important revenue work connected with Land Revenue, Cesses, Income Tax, Certificates, etc., is transacted in the headquarters of the district and the revenue work of sub-divisions is light and easy. Similarly, the work of control and supervision of the Police Department is done at head-quarters, and the Sub-Deputy Collector will have little to do in this line. The treasury work in sub-divisions is light, and is now often done by Sub-Deputy Collectors. On the whole, therefore, I am satisfied that a Sub-Deputy Collector will, under the instructions of the District Officer, be quite competent to manage the revenue and other work of sub-divisions, when the judicial functions have been separated and made over to the Sub-Divisional Officer.

There is only one objection which can be reasonably urged against this scheme. Many Sub-Deputy Collectors are now employed at the headquarters of districts, sometimes on important work, and to take them all away for sub-divisions may be impracticable. Some District Officers may reasonably urge that they require Sub-Deputy Collectors at the district headquarters also, and, where this is

satisfactorily shown, the requisition should be complied with. It may be necessary, therefore, to appoint twenty or thirty additional Sub-Deputy Collectors, and this is the only increase to the cost of administration which appears to me necessary for effecting a complete separation between Judicial and Executive functions in Bengal.

Even this additional cost may be met by savings in other departments. Special Deputy Collectors and Sub-Deputy Collectors are employed on excise work, and their special services are wholly unnecessary in this department. It has always appeared to me, and to many others, that the services of such trained and well-qualified officers are wasted in performing work which does not require officers of their rank. If these officers were withdrawn from the Excise Department, and if the work of that department were included in the general work of the district, as was the case some years ago, it would probably be unnecessary to appoint additional Sub-Deputy Collectors, as recommended in the last paragraph.

The scheme which has been briefly set forth in the preceding paragraphs is a practicable one, and can be introduced under the present circumstances of Bengal, excluding the backward tracts. I have worked both as Sub-Divisional Officer and as District Officer in many of the districts in Bengal, and I would undertake to introduce the scheme in any Bengal District, and to work it on the lines indicated above.

I have only to add that if the scheme set forth above—with such modifications in details as may be deemed necessary after a careful consideration of it by the Government—be introduced, it will be necessary to recast the Code of Criminal Procedure so as to relieve the District Officer and his subordinates of judicial powers in criminal cases, and to vest them in the District Judge and his subordinates. The police work, the revenue work, and the general executive work can then be performed by the District Officer with greater care and satisfaction to himself, and also to the greater satisfaction of

the people in whose interest he administers the District.

Mr. Romesh Dutt wrote in INDIA for October, 1893 :—

My paper on this subject appeared in the August number of INDIA. The paper has been carefully read by many gentlemen interested in questions of Indian administration, and capable of forming a proper judgment on such questions. Their opinions will help the public in forming a correct opinion on this very important subject.

The Right Hon. Sir Richard Garth, Q.C., Late Chief Justice of Bengal, has given my views his qualified support from a judicial point of view. As his remarks have already appeared in the August number of INDIA it is unnecessary for me to do more than quote one or two sentences only.

"So far," he says, "as I am capable myself of forming an opinion upon his scheme, I entirely approve of it. It seems to me the most natural and obvious means of separating the two great divisions of labour, the executive and the judicial. . . It seems only in accordance with reason that magistrates who are employed upon executive work should be under the chief executive officer of each district, and that those who are employed in judicial work should be under the chief judicial officer."

These remarks are important, as there is no higher authority on judicial questions concerning Bengal than the late Chief Justice of that province.

In the same way there is no Englishman living who can speak with higher authority on executive and administrative questions concerning Bengal than Mr. Reynolds, late Secretary to the Government of Bengal. He passed his official life in that province, and rose from the lowest appointments in the Civil Service of Bengal to one of the highest. He held charge of some of the most extensive and important districts in Bengal, and performed those combined judicial and executive duties which a district officer in Bengal has to perform. He rose to be Secretary to the Bengal Government, and in that capacity presided over the executive administra-

tion of the province. His opinion, therefore, has a unique value and importance.

Mr. Reynolds has suggested one modification to my scheme, and subject to that modification has entirely approved of it. I proposed to contrast sub-deputy collectors with the revenue and executive work of Bengal sub-divisions. Mr. Reynolds thinks that in the more important sub-divisions a deputy collector, and not a sub-deputy collector, should be entrusted with these duties. A suggestion coming from such an authority is entitled to respect, and I accept it in its entirety. Let deputy collectors be employed in the more important sub-divisions to do the revenue and executive work and sub-deputy collectors in the lighter sub-divisions. This modification will require the appointment of twenty or thirty additional deputy collectors, instead of as many sub-deputy collectors, whose appointment I proposed. Thus modified my scheme has Mr. Reynolds' entire support and approval.

My scheme has been read and approved by other gentlemen, who are still in the Civil Service of Bengal. One of them made to me, independently of Mr. Reynolds, the same suggestion which Mr. Reynolds has made. On the whole, therefore, I believe, I am justified in stating that my scheme suggests a practicable way of separating the executive and judicial services in Bengal, without materially adding to the cost of administration.

I have purposely refrained from saying anything on the subject of the existing rules of promotion in the Civil Service. Whether these rules will require modification in some respects after the judicial and executive services have been separated is a matter on which the opinion of the Government of Bengal must be final and conclusive. When I joined the Service in 1871 members of the Service were promoted from the rank of joint magistrates to be district officers, and from the rank of district officers to the posts of district judges. It may be considered desirable and necessary to revert to this old rule of promotion after the district officers have been relieved of

their judicial duties. It may be also considered desirable to rule that an assistant magistrate will be entitled to rise to the rank and the judicial powers of a joint magistrate only after he has served as assistant for a certain number of years. Such a rule will ensure some degree of experience and local knowledge in judicial officers, and will also prevent frequent reversions from the post of a joint magistrate to that of assistant. These, however, are matters which can be best considered and decided by the Government of Bengal when the separation of the judicial and executive services has been decided upon. The Bengal Government will find no difficulty in shaping the rules of promotion in the Civil Service according to the exigencies of a just and proper system of administration.

With regard to the details of the administrative arrangements given in my previous paper, no modification except that of Mr. Reynolds has been suggested to me by my friends competent to form a judgment on the subject. I have no doubt that the scheme as modified and supported by the late Secretary to the Government of Bengal will receive the consideration which it deserves from the authorities, both in India and in England.

PART V

Sir Harvey Adamson's Scheme

THE SEPARATION SCHEME.

AS SKETCHED BY THE HOME MEMBER IN HIS BUDGET SPEECH, MARCH 27, 1908.

I propose to say a few words on a subject on which volumes have been written during the past few years—the separation of Judicial and Executive functions in India. In 1899 the Secretary of State forwarded to the Government of India a memorial signed by ten gentlemen, seven of whom had held high judicial office in India, in which the memorialists asked that a scheme might be prepared for the complete separation of Judicial and Executive functions. They based their condemnation of the existing system largely upon notes illustrating its alleged evils, which were compiled by Mr. Manomohan Ghose, a barrister in large criminal practice. The memorial was referred to Local Governments and to high judicial officers in India for report, with the result that an enormous mass of correspondence has accumulated. This correspondence disclosed a decided preponderance of opinion in favour of the existing system, but whether it was the weight of the papers or the weight of their contents that has so long deferred a decision of the question is more than I can say. The study of the correspondence has been a tedious and laborious process, but having completed it, I am inclined to think that the consensus of opinion against a change may have been due in great measure to the faulty presentation by the memorialists of the case for separation, as well as to the obvious defects of the constructive proposals put forward by them, which were shown by the Government of Bengal to be likely to cost many lakhs of rupees in that province alone. The authors of the memorial, in my view, put their case very feebly when they rested it on a few grave judicial scandals which were alleged to have occurred from time to time. It was easy to show that many

of these scandals could have occurred even if the functions had been separated. Many who have reported their satisfaction with the existing system have followed the memorialists and been impressed by the comparative infrequency of grave judicial scandals in India having their cause in the joinder of functions, and by the certainty of their being exposed to light and remedied. Scandals may to some extent exemplify the defects of a system, but there can be no doubt that, whatever system be adopted, scandals must occur. Occasionally, very rarely I hope, we find the unscrupulous officer, less infrequently we find the incompetent officer, but not so seldom do we find the too zealous officer, perfectly conscientious, brimming over with good intentions, determined to remedy evils, but altogether unable to put into proper focus his own powers and duties and the rights of others. With officers of these types—and they cannot be altogether eliminated—occasional public scandals must occur, not only in India, but elsewhere, as a perusal of any issue of *Truth* will show. I see no reason for believing that they occur more frequently in India than England or any other country; but this at least may be said for the Indian system of criminal administration, but in no country in the world is so perfect an opportunity given for redressing such scandals when they occur.

But though the preponderance of opinion in the correspondence is as I have stated, a deeper search reveals considerable dissatisfaction with the existing system. This is expressed chiefly in the reports of judicial officers. The faults of the system are not to be gauged by instances of gross judicial scandals. They are manifested in the ordinary appellate and revisional work of the higher judicial tribunals. In one case a sentence will be more vindictive than might have been expected if the prosecution had been a private one. In another a conviction has been obtained on evidence that does not seem to be quite conclusive. In short, there is the unconscious bias in favour of a conviction enter-

tained by the Magistrate who is responsible for the peace of the district, or by the Magistrate who is subordinate to that Magistrate and sees with his eyes. The exercise of control over the subordinate Magistrates by whom the great bulk of criminal cases are tried is the point where the present system is defective. This control indirectly affects the judicial action of the subordinate Magistrates. It is right and essential that the work of the subordinate Magistrates should be the subject of regular and systematic control, for they cannot be relied on more than any other class of subordinate officials to do their work diligently and intelligently without it. But if the control is exercised by the officer who is responsible for the peace of the district there is the constant danger that the subordinate Magistracy may be unconsciously guided by other than purely judicial considerations. I fully believe that subordinate Magistrates very rarely do an injustice wittingly. But the inevitable result of the present system is that criminal trials, affecting the general peace of the district, are not always conducted in the atmosphere of cool impartiality which should pervade a Court of Justice. Nor does this completely define the evil, which lies not so much in what is done, as in what may be suspected to be done ; for it is enough that the administration of justice should be pure ; it can never be the bedrock of our rule unless it is also above suspicion.

Those who are opposed to a separation of functions are greatly influenced by the belief that the change would materially weaken the power and position of the District Magistrate and would thus impair the authority of the Government of which he is the chief local representative. The objection that stands out in strongest relief is that prestige will be lowered and authority weakened if the officer who has control of the police and who is responsible for the peace of the district is deprived of control over the Magistracy who try police cases. Let me examine this objection with reference to the varying stages of the progress of a com-

munity. Under certain circumstances it is undoubtedly necessary that the executive authorities should themselves be the judicial authorities. The most extreme case is the imposition of martial law in a country that is in open rebellion. Proceeding up the scale we come to conditions which I may illustrate by the experience of Upper Burma for some years after the annexation. Order had not yet been completely restored and violent crime was prevalent. Military law had gone and its place had been taken by civil law of an elementary kind. District Magistrates had large powers extending to life and death. The High Court was presided over by the Commissioner, an executive officer. The criminal law was relaxed, and evidence was admitted which under the strict rules of interpretation of a more advanced system would be excluded. All this was rendered absolutely necessary by the conditions of the country. Order would never have been restored if the niceties of law as expounded by lawyers had been listened to, or if the police had not gone hand in hand with the justiciary. Proceeding further up the scale we come to the stage of a simple people, generally peaceful, but having in their character elements capable of reproducing disorder, who have been accustomed to see all the functions of Government united in one head, and who neither know nor desire any other form of administration. The law has become more intricate and advanced, and it is applied by the Courts with all the strictness that is necessary in order to guard the liberties of the people. Examples would be easy to find in India of the present day. So far I have covered the stages in which a combination of magisterial and police duties is either necessary or is at least not inexpedient. In these stages the prestige and authority of the Executive are strengthened by a combination of functions. I now come to the case of a people among whom very different ideas prevail. The educated have become imbued with Western ideals. Legal knowledge has vastly increased. The lawyers are of the people, and they have

derived their inspirations from Western law. Anything short of the most impartial judicial administration is contrary to the principles which they have learned. I must say that I have much sympathy with Indian lawyers who devote their energies to making the administration of Indian law as good theoretically and practically as the administration of English law. Well, what happens when a province has reached this stage and still retains a combination of magisterial and police functions? The inevitable result is that the people are inspired with a distrust of the impartiality of the judiciary. You need not tell me that the feeling is confined to a few educated men and lawyers and is not shared by the common people. I grant that if the people of such a province were asked one by one whether they objected to a combination of functions, ninety per cent. of them would be surprised at the question and would reply that they had nothing to complain of. But so soon as any one of these people comes into contact with the law his opinions are merged in his lawyer's. If his case be other than purely private and ordinary, if for instance he fears that the police have a spite against him or that the District Magistrate as guardian of the peace of the district has an interest adverse to him, he is immediately imbued by his surroundings with the idea that he cannot expect perfect and impartial justice from the Magistrate. It thus follows that in such a province the combination of functions must inspire a distrust of the Magistracy in all who have business with the Courts. Can it be said that under such circumstances the combination tends to enhancement of the prestige and authority of the Executive? Can any Government be strong whose administration of justice is not entirely above suspicion? The answer must be in the negative. The combination of functions in such a condition of society is a direct weakening of the prestige of the Executive.

"On these grounds the Government of India have decided to advance cautiously and tentatively towards the separation of Judicial and Executive functions in those parts of

India where the local conditions render that change possible and appropriate. The experiment may be a costly one, but we think that the object is worthy. It has been consistently pressed on us by public opinion in India. I have had the pleasure of discussing the question with Indian gentlemen, among others with my colleagues the Hon'ble the Maharaja of Darbhanga and the Hon'ble Mr. Gokhale. Their advice coincides with my own view, that the advance should be tentative and that a commencement should be made in Bengal including Eastern Bengal. It is from Bengal that the cry for separation has come, and if there is any force in the general principles which I have expounded, it would appear that the need for a separation of police and magisterial functions is more pressing in the two Bengals than elsewhere. One cause may be found in the intellectual character of the Bengali, another in the absence of a revenue system which in other provinces brings executive officers into closer touch with the people, another in the fact that there is no machinery except the police to perform duties that are done elsewhere by the better class of Revenue-officer, another in the fact that there are more lawyers in Bengal than elsewhere, and another, I suspect, in the greater interference by the District Magistrate with police functions in Bengal than in other provinces. These may or may not be the real causes, but most certainly the general belief is that the defects of a joinder of functions are most prominent in the Bengals, and it is on those grounds that we have come to the conclusion that a start should be made in these two provinces.

"It is a very easy matter to propose as an abstract principle that magisterial and police functions should be separated, but in the descent to actual details the subject bristles with difficulties. A solution has been attempted, and it is being sent to the two Local Governments for criticism. It is desirable that it should be submitted to the criticism of the public at the same time. I may therefore now disclose the details. But in doing so I desire to state clearly that the

tentative solution is not a final expression of the decision of the Government of India, and that it is merely a suggestion thrown out for criticism with the idea of affording assistance in the determination of a most difficult problem. The general principle outlined is that the trial of offences and the control of the Magistrates who try them should never devolve on officers who have any connection with the police or with executive duties, while on the other hand the prevention of crime should be a function of the District Officer and his executive subordinates who are responsible for the preservation of the peace of the district.

The outlines of the scheme, stated badly, and without discussion, are as follows :—

(1) Judicial and Executive functions to be entirely separated to the extent that an officer who is deputed to executive work shall do no judicial work, and *vice versa*, except during the short period when he is preparing for departmental examinations.

(2) Officers of the Indian Civil Service to choose after a fixed number of years' service whether their future career is to be judicial or executive, and thereafter to be employed solely on the career to which they have been allotted. The allotment to depend on choice modified by actuarial considerations.

(3) Officers of the executive branch of the Provincial Civil Service and, if possible, members of the Subordinate Civil Service to be subject to the same conditions as in (2), though the period after which choice is to be exercised may be different.

(4) During the period antecedent to the choice of career officers of both services to be gazetted to Commissioners' divisions and to be deputed to executive or judicial duties by the Commissioner's order.

(5) During this period deputation from executive to judicial or *vice versa* must be made at intervals not longer than two years.

(6) High Courts to be consulted freely on questions of transfer and promotion of all officers who have been permanently allotted to the judicial branch.

(7) Two superior officers to be stationed at the head-quarters of each district, the District Officer and the senior Magistrate.

(8) The District Officer to be the executive head of the district, to exercise the revenue functions of the Collector and the preventive magisterial powers now vested in the District Magistrate, to have control over the police, and to discharge all miscellaneous executive duties of whatever kind.

(9) The magisterial judicial business of the district to be under the senior Magistrate, who will be an officer who has selected the judicial line—either an Indian Civilian or a Deputy Magistrate of experience. He will be the head of the Magistracy and his duties will be (1) to try important criminal cases (2) to hear appeals from second and third class Magistrates, (3) to perform criminal revision work, and (4) to inspect Magistrates' Courts. In districts where these duties do not give him a full day's work he may be appointed an additional District Judge and employed in civil work and in inspecting Civil Courts. If, where the senior Magistrate is an officer of the Provincial Civil Service, it is considered inexpedient on account of his lack of experience to give him civil work, he may be appointed Assistant Sessions Judge. In either capacity he would give relief to the District and Sessions Judge.

(10) At the head-quarters of districts, where there are at present Indian Civilians, Deputy Magistrates and Sub-deputy Collectors, a certain number to be deputed to executive and the remainder to judicial work.

(11) Sub-divisional boundaries to be re-arranged, and each district to be divided into judicial sub-divisions and executive sub-districts. The boundaries of these need not be conterminous. The area of a judicial sub-division to be such as to give the judicial officer in charge a full day's work, and

similarly with executive sub-districts. Boundaries to be arranged so as to disturb existing conditions as little as possible.

(12) Thus the whole district is divided into—

A. Executive—

(*a*) Head-quarters,

(*b*) Sub-districts,

and also into—

B. Judicial—

(*a*) Head-quarters,

(*b*) Sub-divisions,

and the staff is divided into—

A. Executive, under the District Officer namely :—

(*a*) The District Officer.

(*b*) A certain number of Indian Civilians, Deputy Collectors and Sub-deputy Collectors at head-quarters.

(*c*) An Indian Civilian or Deputy Collector for each sub-district.

B. Judicial, under the senior Magistrate, namely :—

(*a*) The senior Magistrate.

(*b*) A certain number of Indian Civilians, Deputy Magistrates and Sub-deputy Magistrates at head-quarters.

(*c*) An Indian Civilian or Deputy Magistrate for each sub-division.

(13) The District Officer to be empowered as a District Magistrate, and certain other executive officers to be empowered as first class Magistrates, solely for the performance of the preventive functions of Chapter VIII (omitting section 106) to Chapter XII of the Code of Criminal Procedure.